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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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CHMURA ECONOMICS & ANALYTICS, LLC

Plaintiff

vs.

Case No. 3:19-CV-00813

RICHARD LOMBARDO

Defendants

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REMOTE VIDEO DEPOSITION OF:
CHRISTINE CHMURA, PH.D.

Taken on:

May 1, 2020

11:00 a.m.

Taken at:

McGuire Woods, LLP

Gateway Plaza

800 East Canal Street

Richmond, VA

Kelliann D. Linberg, RPR, Notary Public

1 APPEARANCES: (Via Videoconference)

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8 On behalf of the Defendants:

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14 ALSO PRESENT:

15 RICHARD LOMBARDO
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1 COURT REPORTER: The attorneys
2 participating in this deposition acknowledge that I am
3 not physically present in the deposition room and that
4 I will be reporting this deposition remotely. They
5 further acknowledge that, in lieu of an oath
6 administered in person, the witness will verbally
7 declare her testimony in this matter is under penalty
8 of perjury. The parties and their counsel consent to
9 this arrangement and waive any objections to this
10 manner of reporting.

11 Please indicate your agreement by stating
12 your name, firm name, party represented and your
13 agreement on the record.

14 MS. COOPER: My name is Christine Cooper.
15 I represent Richard Lombardo, and I agree.

16 MR. SATTERWHITE: Rob Satterwhite from
17 McGuire Woods representing Chmura, and we also agree.

18 CHRISTINE CHMURA, Ph.D., of lawful age,
19 called for examination, as provided by the Ohio Rules
20 of Civil Procedure, being by me first duly sworn, as
21 hereinafter certified, deposed and said as follows:

22 EXAMINATION OF CHRISTINE CHMURA, Ph.D..

23 BY MS. COOPER:

24 Q. Good morning, Dr. Chmura. I am Christine
25 Cooper. I represent Mr. Lombardo in the case filed by

1 Chmura in the Eastern District of Virginia. I am going
2 to start with some background information. Forgive me,
3 since we are doing this by video, my video is on one
4 screen, and my screen with you is on the other. So if
5 I am looking in both discretions, that's why.

6 Can you please state your full name for the
7 record?

8 A. Christine Chmura.

9 Q. And what's your residential address?

10 A. [REDACTED]

11 [REDACTED]

12 Q. Have you ever been deposed before?

13 A. Yes.

14 Q. When was the last time you were deposed?

15 A. Probably a couple of years ago.

16 Q. Have you been deposed more than once?

17 A. Yes.

18 Q. How many times have you been deposed?

19 A. At least five.

20 Q. Were those depositions in your individual
21 capacity?

22 A. No, as an expert witness representing the
23 firm.

24 Q. Do you recall the cases that you testified
25 in?

1 A. I do not.

2 Q. And what was the subject matter that you
3 testified about?

4 A. I recall one being a wrongful death,
5 another was related to the economy, or what the crux of
6 the economy was during a period of time, and another
7 one -- another one I had forgotten that just came to my
8 mind was for Dominion Power related to investments and
9 the economic impact of those investments.

10 Q. Was your testimony -- sorry. Was this --
11 and I will get to my ground rules. I am breaking my
12 ground rules now. I apologize. I jumped in. I will
13 step back if you haven't completed your answer. It's a
14 little harder for me to pick up on the cues on the
15 video than if we were in the room together.

16 Was the subject matter of your testimony
17 related to damages in those cases?

18 MR. SATTERWHITE: Object to the form.

19 Q. You can go ahead and answer.

20 A. Yes.

21 Q. I am going to go over so some ground rules,
22 so I don't break them myself, since it's been a little
23 while since you have been deposed. If you could
24 respond with a yes or no as opposed to an uh-huh or
25 uh-uh, or shaking of your head so that the court

1 reporter can get your answer down. I would ask that
2 you wait until I finish the question before answering
3 so we are not talking over each other.

4 I, in return, will take a long pause to
5 make sure that you are done answering before I ask my
6 next question. If you don't understand a question,
7 please ask me to repeat it or rephrase it. And if you
8 need a break, just ask at any time. The only request I
9 would have is that if there is an open question
10 pending, that you provide an answer before we break.
11 Does that make sense?

12 A. Yes.

13 Q. Did you bring anything with you to the
14 deposition today, any documents with you to the
15 deposition today?

16 A. No.

17 Q. Can you tell me about your education, your
18 higher education?

19 A. I have a B.S. Degree from Clemson
20 University in Business, then I, for one year, went to a
21 bible college and got a one year certificate, Master's
22 in Missions. I went back to Clemson and got a Master's
23 Degree in Economics. And more recently, went to
24 Virginia Commonwealth University and got a Ph.D. in
25 Business Administration with emphasis on Economics and

1 Finance.

2 Q. When did you earn that degree?

3 A. It was several years ago. I'm not good
4 with dates, I will just let you know that right now.

5 Q. That's okay. Was it within the last 10
6 years?

7 A. No. I started my company 20 years ago and
8 it was prior to that.

9 Q. Are you the founder of Chmura Economics &
10 Analytics, LLC?

11 A. Yes, I am.

12 Q. When did you found Chmura?

13 A. 1998 is when we filed the SCC. December.

14 Q. At that point, was it called Chmura
15 Economics & Analytics, LLC?

16 A. No, it was called Capital Research &
17 Analytics, LLC.

18 Q. At what point did it become Chmura
19 Economics & Analytics?

20 A. Probably a year later.

21 Q. What was the reason for the name change?

22 A. Capital -- we were in the capital, so that
23 -- Chmura is a stronger word, more rememberable, once
24 you can learn how to pronounce it correctly, so we
25 thought that was a better name. Also, I had a good

1 reputation in the state and it would carry some weight.

2 Q. Am I pronouncing it right when I say
3 Chmura?

4 A. That's good enough. Chmura. Thank you for
5 asking.

6 Q. Prior to the founding of Chmura, what did
7 you do?

8 A. Prior to the company, I was the chief
9 economist at Crestar Bank, which was purchased by
10 Suntrust. When they were purchased, they asked me to
11 go to Atlanta to be the chief economist. By saying no,
12 I was given severance and able to take several large
13 projects with me to start the company.

14 Q. When Chmura was founded, what type of
15 business was it?

16 A. Consulting. Economic consulting.

17 Q. And has it changed over time?

18 A. Yes, we do economic consulting. We have
19 macro economic models that we run. Most of our
20 customers, at first, were banking, and then we got more
21 into workforce. We created JobsEQ in early 2000 and
22 have shifted over time to more software than consulting
23 work in terms of revenue.

24 Q. Can you tell me a little about JobsEQ and
25 what it is?

1 A. JobsEQ is a S A A S product, so it is
2 software as a --

3 (Reporter asked for clarification).

4 S-A-A-S, software as a service.

5 It provides demographic information, labor
6 market information to realtime job postings. It gives
7 people the ability to see what's a forecast for a
8 particular region, whether that be a county, MSA, or a
9 zip code footprint so that they can see what sort of
10 courses should I teach, if I am an educator; if a firm
11 moves here, will they find the workers they need; if I
12 move to a certain place, will I find the workers that I
13 need and that type of thing.

14 Q. Now, you are here today as a corporate
15 representative on behalf of Chmura, correct?

16 A. Yes.

17 Q. And you are also here in your individual
18 capacity?

19 A. Yes.

20 Q. I am going to start with your testimony
21 relating to your corporate representation, and we will
22 complete the individual stuff later in the deposition.
23 I am going to try to do a clean break on that to keep
24 it clear in the record where we are at. What is --
25 pardon me.

1 Are you a current owner of Chmura?

2 A. Yes, I am.

3 Q. And what is your title?

4 A. Dr. Christine Chmura, CEO and Chief
5 Economist.

6 Q. What is your ownership interest in Chmura?

7 A. 49%.

8 Q. Who are the other owners?

9 A. Leslie Peterson, John Chmura, Xiaobing
10 Shuai, Sharon Simmons, Greg Chmura.

11 Q. What are their ownership interests,
12 starting with Ms. Peterson?

13 A. Let me just tell you again I am not really
14 good with numbers like that. When you ask me about the
15 economy and I will do fine. So John Chmura is 5%.
16 Greg Chmura is 3%. Leslie Peterson is the remainder.
17 Xiaobing Shuai, Sharon Simmons and Greg Chmura all have
18 profit interests.

19 Q. Can you explain to me the idea of profit
20 interests?

21 A. So let's say they were given this profit
22 business in 1999, that means if the company were worth
23 \$1,000,000 in 1999, a valuation was done and let's say
24 it was worth \$1,000,000, then if we sold the next day
25 for \$2,000,000, then they would benefit from the

1 difference. They would get a percentage of that
2 1,000,000, but they would not have -- get a percentage
3 of the total equity.

4 Q. Okay. I understand. Thank you. Now, I
5 notice there are some shared last names as far as the
6 owners. What is your relationship to Greg Chmura?

7 A. Greg Chmura is my brother.

8 Q. And how are you related to John Chmura?

9 A. John Chmura is my nephew.

10 Q. Are there any other owners that you are
11 related to?

12 A. No.

13 Q. I am going to show you what's been marked
14 as Defendant's Exhibit A.

15 - - - - -

16 (Thereupon, Previously Marked
17 Deposition Exhibit A, Copy of Notice of
18 Deposition, was shown for purposes of
19 identification.)

20 - - - - -

21 Q. I will give you control of this as well
22 (indicating). So now you can scroll through this
23 document.

24 MR. SATTERWHITE: Let me know if you want
25 me to go faster or slower.

1 A. Is there a purpose for me to scroll through
2 this? It might help to know while I am looking at it.

3 Q. Just to know if you recognize this
4 document, if you have seen it before, and then we are
5 going to go through Exhibit A that is attached to it.

6 A. (Reviewing).

7 Q. Have you seen this document before?

8 A. Yes, I believe I have seen it before.

9 Q. And can you describe what it is? If we
10 can, go back to the front of it.

11 A. Chmura, Plaintiff, Notice of Deposition.
12 Okay. So it -- is this the document that has questions
13 for the deposition today?

14 Q. Yes, it is.

15 A. Okay.

16 Q. Have you reviewed this prior to your
17 deposition today?

18 A. Oh, yeah.

19 Q. And you are here to testify about certain
20 topics set forth in that notice, correct?

21 A. That's correct.

22 Q. Generally, how did you prepare for your
23 deposition today?

24 A. Generally, I read the questions. I
25 sometimes looked at some emails. I read, you know, the

1 documents that have been submitted to the court.

2 Q. Did you have -- did you speak with
3 anyone -- and let me caution, I am not looking for
4 communications with your attorney. Did you speak with
5 anyone other than your attorney about your deposition
6 today?

7 A. Yes. Yes.

8 Q. Who did you speak with?

9 A. I spoke with Greg Chmura. I spoke with
10 John Chmura. I spoke with Leslie Peterson. I spoke
11 with Sharon Simmons. I spoke with Aisha. I think
12 that's it.

13 Q. Starting with Greg, what was the substance
14 of your conversation?

15 A. I can't remember all my conversations. I
16 have so many every day, but with Greg, I recall talking
17 to him about the estimate, the present value of the
18 loss related to the IEDC event.

19 Q. How about with John Chmura?

20 A. With John, we probably talked about the
21 times log we put together.

22 Q. And what about with Ms. Peterson?

23 A. We probably talked about everything. We
24 talked about what -- some of what she was answering. I
25 probably ran by her some of the thoughts to make sure

1 my recollection was correct on some of these other
2 items.

3 I am sure we talked about that letter that
4 Rick falsified and lied about in terms of having a job
5 opportunity and the difficult situation that put us in
6 with a client that we were developing, or a vendor that
7 we were developing a relationship with.

8 Q. And what about with Sharon Simmons?
9 Correct?

10 A. Sharon Simmons? I believe we were looking
11 at sales, historic sales -- we've talked about a lot of
12 things. I mean, we work together. But historic sales
13 and why Rick didn't get 15%, which was because he
14 didn't make the full sale.

15 Q. And what was your conversation -- well, let
16 me step back. You mentioned Aisha. Is that Aisha
17 Ortiz?

18 A. Yes.

19 Q. And what was your conversation with
20 Ms. Ortiz?

21 A. Just a quick conversation on when she put
22 the work from home policy together. She actually
23 revised it. A-I-S-H-A.

24 Q. Is there anything else you did to prepare
25 for your deposition today?

1 A. I prayed about it.

2 Q. All right. I am going to turn your
3 attention to Exhibit A, Defense Exhibit A, the exhibit
4 attached to that. And that's confusing.

5 Number 2, "The factual basis for all
6 allegations in the Amended Complaint and denials in the
7 Answer to the Counterclaim."

8 You have been designated as the corporate
9 representative to speak on that topic, correct?

10 A. Correct.

11 Q. I am going to show you what's been marked
12 as Defendant's Exhibit D, which I will represent to you
13 is the Amended Complaint.

14 - - - - -

15 (Thereupon, Previously Marked
16 Deposition Exhibit D, Copy of Amended
17 Complaint, was shown for purposes of
18 identification.)

19 - - - - -

20 Q. I will give you control of that as well.
21 Go ahead and take a look at this.

22 THE WITNESS: Too bad we can't have it in
23 our hands. It would be a lot easier.

24 MR. SATTERWHITE: I agree.

25 A. I am familiar with the document if you want

1 to ask specific questions, we can go to that area.

2 Q. Sure. This is the First Amended Complaint
3 filed by Chmura against Richard Lombardo, correct?

4 A. Yes.

5 Q. I want to draw your attention first to
6 Paragraph 4 of the Complaint.

7 A. Okay.

8 Q. This paragraph is "The value of information
9 Lombardo has retained, and the customer contracts with
10 which Lombardo has threatened to interfere, is well
11 over \$100,000."

12 With respect to that, what information does
13 this paragraph refer to?

14 A. Okay. So Mr. Lombardo had a computer of
15 ours that he used at a conference, IEDC conference, and
16 previous to that, a Texas conference. And we go to
17 these conferences and sit in an exhibit booth for the
18 sole purpose of meeting people, getting their contact
19 information and then following up with a demo, which
20 needs to be done as soon as possible afterward.

21 And this is not at a small expense to us.
22 For example, the IEDC, we're a corporate sponsor, which
23 means we pay \$25,000 a year to be called a sponsor, and
24 then we pay more money to send people to these
25 conferences. This particular one, I believe in

1 Indianapolis, I attended, Eli attended, Rick attended,
2 two other salespeople attended.

3 I was a speaker at the conference. I gave
4 a Ted Talk -- not a Ted Talk, sorry. It was an Ed
5 Talk. If it was a Ted Talk, then you have to pay Ted
6 money, so they call it an Ed Talk.

7 And I was a speaker at the opening session,
8 and whenever I'm a speaker, that draws a lot more
9 people to our booth. So the bottom line is, when we go
10 to these events, we are there to learn about other
11 people who would like to see JobsEQ. Rick was taking
12 down everyone's name, and we had quite a long list.

13 When he returned, he refused to give us
14 that computer. I went through the list of names, and I
15 identified those who had requested a demo. One person
16 was handed, or asked for a contract while we were at
17 the event which I didn't -- I assume that that was
18 probably before then. I didn't assume that person
19 wanted a demo.

20 When we give demos, 24% of the people who
21 get a demo end up getting a license for the product.
22 Based on that, we should have had five -- at least five
23 licenses come out of that event. On average, our --
24 our average sale is about 8,000.

25 And then we took that \$3,000 amount in the

1 first year, and we did the present value going forward
2 for four additional years. We used 2% inflation rate
3 to discount it, and we also assumed that we would have
4 some runoff; that is, in the first year, we lose -- or
5 83% of people don't sign up, but after that, 90%, 91%
6 sign up. Taking all of those things into account, the
7 amount came to well over \$100,000. I believe it was
8 198,000.

9 Q. So the information that you were referring
10 to in Paragraph 4 is the conference notes from the IEDC
11 conference, as well as the Texas conference; is that
12 correct?

13 A. That's correct.

14 Q. Is there any other information that the
15 paragraph refers to?

16 A. Well, I don't know what Rick, or
17 Mr. Lombardo, did with those customer contacts that he
18 had, whether he has given them to someone else. That's
19 not taken into account, that amount.

20 Q. What customer contacts are you referring
21 to?

22 A. Well, once we did get the computer back, he
23 had an Excel sheet that we sent out weekly to our
24 account managers that had every single user written
25 down on it, all the -- every institution that's using

1 it, all the people within the institution that's using
2 it, when they last used the software, and how many
3 minutes of software time that they were using.

4 Q. That's separate and apart from the
5 conference notes you just talked about?

6 A. That is correct.

7 Q. Do you have any basis for asserting that
8 Mr. Lombardo did anything with that Excel sheet?

9 MR. SATTERWHITE: Object to the form. Go
10 ahead.

11 A. Eventually, over time, it became apparent
12 that Mr. Lombardo does not tell the truth. Even when
13 pushed, you really have to push him to get him to tell
14 the truth. And so I have no reason to believe that he
15 has not given that away.

16 He left the company saying that he was
17 going to destroy the firm, he was going to sell our
18 company list to the highest bidder. Things like that
19 make me not trust his word.

20 Q. Have any customers come to you and said
21 that their -- well, let me rephrase that.

22 Do you have any factual basis other than --
23 do you have any factual basis for believing
24 Mr. Lombardo retained the customer list?

25 MR. SATTERWHITE: Object to the form.

1 A. Yes, it was on the computer that belonged
2 to us, and we also --

3 Q. Did -- go ahead. You were going to say,
4 and we also. Go ahead and finish your thought.

5 A. We were -- Mr. Lombardo provided to a
6 recruiter a list of our salespeople and the dollar
7 amounts of their sales, which we would consider
8 confidential. And we understand that that recruiter
9 provided it to a software company; who knows where it
10 went after that.

11 Q. Did that list have any customer contact --
12 customer information on it?

13 A. That particular list did not.

14 Q. Do you have any factual basis for believing
15 Mr. Lombardo distributed that Excel spreadsheet
16 mentioned a few minutes ago?

17 MR. SATTERWHITE: Object to the form.

18 A. Not at this point in time.

19 Q. Is there any other information you are
20 referring to in paragraph -- or Chmura is referring to
21 in Paragraph 4 of the Amended Complaint?

22 MR. SATTERWHITE: Object to the form.

23 A. Not that I know of at this point.

24 Q. I want to turn to Paragraph Number 11 and
25 12 of the Amended Complaint, Exhibit D.

1 Can you tell me --

2 A. I'm sorry. I am still reading.

3 Q. Okay. Sorry.

4 A. (Reviewing).

5 Okay. Thank you.

6 Q. Paragraph Number 11 states, in part, that
7 Lombardo customers are located in the midwest --
8 although many -- let me say it properly.

9 "Although many of Lombardo's customers were
10 located in the Midwest, he sold to customers
11 nationwide."

12 With respect to Mr. Lombardo's sales, where
13 was he conducting his sales from?

14 MR. SATTERWHITE: Christine, I am going to
15 object with respect to the designation because you also
16 identified in Category 13, his job duties and job
17 description, and that we have designated Ms. Peterson
18 for. I have no problem with Dr. Chmura answering, but
19 I do object on the grounds that it is not a designated
20 topic.

21 MS. COOPER: Okay.

22 MR. SATTERWHITE: Go ahead.

23 A. Can you ask the question again, please?

24 Q. Yes, I can.

25 Primarily, where does Mr. Lombardo conduct

1 his work?

2 A. He conducted his work in exhibit booths.
3 That's where we got a lot of -- you are talking
4 physically, right?

5 Q. Physically, yes.

6 A. Yeah, exhibit booths. That's where we got
7 a lot of our leads. He sometimes went to customers,
8 for example, Cuyahoga County, Columbus -- I am trying
9 to win a very large contract with the State of Ohio --
10 and then from his office, from our office at 1025 Huron
11 Road. And he worked from home over the last year he
12 was working for us as well.

13 Q. If you know, what percentage of his time
14 was spent in the Huron Road office?

15 MR. SATTERWHITE: If it is easier, I will
16 lodge a standing objection to this issue rather than
17 object every time, because I certainly don't want to do
18 that, but go ahead.

19 MS. COOPER: Okay.

20 A. I don't have a sense of that.

21 Q. Turn to Paragraph 15.

22 A. (Reviewing).

23 I'm finished.

24 Q. And then -- Paragraph 15 refers to a
25 Confidential, Non-Competition and Non-Solicitation

1 Agreement, correct?

2 A. Correct.

3 Q. And it states that, "A true and correct
4 copy of the Agreement is attached as Exhibit A"?

5 A. Correct.

6 Q. If you will, turn to Exhibit A.

7 A. (Indicating). That's fine, I am familiar
8 with this.

9 Q. Is this a true and accurate of copy of the
10 Confidentiality, Non-Competition, Non-Solicitation
11 Agreement between Mr. Lombardo and Chmura?

12 A. Yes.

13 Q. Could you turn to Paragraph 24?

14 MR. SATTERWHITE: Of the First Amended
15 Complaint?

16 MS. COOPER: Of the First Amended
17 Complaint, yes.

18 A. (Reviewing.)

19 MR. SATTERWHITE: All set?

20 THE WITNESS: Sorry, I didn't know you were
21 waiting.

22 Q. That is part of the disconnect of not being
23 in the room together, so I apologize. I don't want to
24 speak over you. I will wait for your cue.

25 With respect to Paragraph 24, it states

1 that, "Chmura's sales have grown significantly over the
2 past four years." What is the factual basis for that
3 statement?

4 A. Are we talking about JobsEQ sales here, or
5 are we talking about revenue total? I was --

6 Q. You have --

7 A. The JobsEQ sales. They have grown
8 significantly over the past four years. Well, we have
9 revenue numbers, so, yes, they have. I don't
10 understand the state -- the question. We went --

11 Q. Was -- I'm sorry, go ahead.

12 A. I was going to say, you know, we went from
13 maybe having 40 customers to over 500, and that also
14 reflects the sales.

15 Q. And Mr. Lombardo was employed during that
16 four years at Chmura, right?

17 A. That is correct.

18 Q. How much of that growth in sales is
19 attributable to Mr. Lombardo?

20 MR. SATTERWHITE: Object to the form.

21 A. I don't have those numbers in front of me,
22 but he was our top salesperson, followed closely by
23 Austen Steele.

24 Q. Is Mr. Steele still with Chmura?

25 A. No, he is not.

1 Q. To your knowledge, did Mr. Lombardo's sales
2 percentage, based on revenues, exceed 30% of the total
3 sales over the period of his employment?

4 A. I would really need to have the numbers in
5 front of me and work that out.

6 Q. And what would you look at to derive those
7 numbers?

8 A. I would look at total sales and total sales
9 from Mr. Lombardo, and I would back out a book of
10 business we handed to him when he came to the company.

11 Q. Was Mr. Lombardo responsible for making a
12 client relationship with a book of business that was
13 handed to him?

14 A. Yes, he was.

15 Q. And did he have renewals for that book of
16 business?

17 A. Sometimes. We don't have a 100% renewal
18 rate. It is more like 83%.

19 Q. Do you know what Mr. Lombardo's renewal
20 rate was?

21 A. I believe it was around that amount.

22 Q. So is it fair to say that Mr. Lombardo
23 contributed significantly to that growth referenced in
24 Paragraph 24 of the Amended Complaint?

25 A. Yes.

1 Q. Paragraph 24 also states, "Chmura is also
2 in the process of revising its commission structure for
3 sales representatives." Do you see that?

4 A. I do.

5 Q. How is it changing the structure -- how was
6 Chmura changing the structure?

7 A. Well, when you have a business such as the
8 one that we have, we are all about serving our clients,
9 making sure that they get what they need, and we want
10 to help as many people as we can. So if you look at
11 having three salespeople, they can't possibly serve
12 well the client base that we expect to have years from
13 now. So we were considering adding -- we are adding --
14 we are considering adding more people, more salespeople
15 so that we could serve a broader client base, and
16 support staff.

17 Q. And it also references, "revising its
18 commission structure." How was the commission
19 structure revised?

20 A. Now, this was not revised before
21 Mr. Lombardo left, but the then sales manager at the
22 time wanted us to consider increasing individuals
23 salaries and decreasing the percent commissioned, and
24 the percent that they would get when someone else
25 signed up, or resigned a contract. Part of this was,

1 ultimately, necessary because additional work that the
2 sales staff was doing was pushed back to the accounting
3 group.

4 Q. Now, you just testified that -- as part of
5 your last answer, that before Mr. Lombardo left.
6 Mr. Lombardo was terminated by Chmura, right?

7 A. Yes, he was terminated.

8 Q. He didn't voluntarily leave?

9 A. No. Sorry, I used the wrong word. He was
10 terminated. But left was -- the same as terminated.
11 But I'll use terminated in the future.

12 Q. That's okay. I just wanted to clarify.
13 Can you look at Paragraph 25 for me?

14 A. (Reviewing.)
15 Yes.

16 Q. Do you see in Paragraph 25 it says that,
17 "Lombardo, dissatisfied with these perceived affronts,
18 became very negative and difficult to manage."

19 What perceived affront is the paragraph
20 referring to?

21 A. Eli apparently was talking to the
22 salespeople about his proposed changes and sales
23 structure before he ran it by leadership for approval,
24 so, apparently, he -- Mr. Lombardo knew -- knew about
25 the potential changes, which were not enacted before he

1 was terminated.

2 Q. And Eli? You are referring to Eli Auerbach
3 who was a sales manager at Chmura at that time?

4 A. Correct. Correct.

5 Q. And is it your testimony that at the time
6 Mr. Auerbach told Mr. Lombardo about this change, he
7 didn't have permission to do that?

8 A. He did not have the approval. What he was
9 sharing was not approved by leadership.

10 Q. What approval -- oh, the revision part?

11 A. Correct. Right. And, you know, one other
12 thing, Christine, Mr. Lombardo was negative and
13 difficult to manage not only at that point, but at
14 prior times. He treated our accounting folks,
15 Christine Steigmann, as if they were a second class
16 citizen, to the degree Christine came just about crying
17 to me one day because she was afraid that Rick was
18 going to have her fired. I assured her that that kind
19 behavior was not what Chmura stood for.

20 Q. So Mr. Lombardo was difficult -- well, I
21 guess to restate that, he became very negative and
22 difficult to manage, but I think your testimony is that
23 he was already difficult to manage; is that correct?

24 A. That is correct.

25 Q. Now, this paragraph also states, "For

1 example, when Lombardo did not receive a discretionary
2 merit based salary increase in 2019, he became incensed
3 and even falsified changes to a rescinded job offer
4 letter from a third party to try to bully Chmura into
5 increasing his salary." What's the factual basis for
6 that statement?

7 A. The factual basis for that statement is the
8 falsified letter, which was odd, or funny, in a bad
9 sense, because you can see that certain letters, or
10 certain words were not even in line with the text
11 around it. It was clear that the date was changed.

12 So when we received this letter, of course,
13 the name of the offering company was taken off. Leslie
14 and I talked about it, and it became apparent to us
15 very quickly who that company was, someone that we were
16 trying to work on a relationship with them being our
17 vendor. And so Leslie picked up the phone, called the
18 person and he acknowledged that, yes, he had offered
19 Lombardo a job.

20 Interesting that it was probably at the
21 IEDC the former year, which we spent a lot of money to
22 send Mr. Lombardo to. And he assured Leslie that that
23 offer was taken off the table at least a month prior to
24 Lombardo trying to convince us that he had a high
25 offer.

1 Q. What parts of the letter do you contend
2 were falsified?

3 A. The date, the amount of money. When he --
4 the amount of time he had to give a response. I don't
5 have the letter in front of me, but that's my
6 recollection at this point.

7 Q. Does Chmura currently have a relationship
8 with GIS, that particular firm?

9 A. It's strained, but, yes, we do.

10 Q. Did GIS want to continue working with
11 Chmura?

12 MR. SATTERWHITE: Object to the form.

13 A. Yes, they do. Our data are very valuable.

14 Q. Can you explain how the relationship is
15 strained?

16 A. There is a trust factor there. When
17 someone offers an employee of yours a job, when that --
18 that is not ethical, that's not the way we work. If we
19 were to try to employ someone, or offer someone a job
20 with, certainly, a customer of ours, we would do that
21 very cautiously and not without talking to that
22 customer first.

23 Q. But Chmura is concerned about working with
24 GIS; is that fair?

25 A. Well, for the trust issue there now, but

1 the real issue here is that we were given something to
2 bully us to try to get a pay increase. We were lied
3 to. It took -- it took several discussions.

4 In fact, we went up to Cleveland, Leslie
5 and I and Greg Chmura sat in the room for, I would say,
6 it was about an hour with Leslie talking to
7 Mr. Lombardo asking him if this was, in fact, a real
8 offer, if he doctored it. And, finally, at the end of
9 the conversation, he said to Rick, Rick, if -- I can't
10 remember his last name -- when you and your wife have a
11 son and he comes to you and he lied, are you going to
12 just let him lie, or are you going to address that?

13 And then she took the piece of paper,
14 pushed it over to Rick and said, Rick, let me give you
15 one more chance, has this been doctored? And he said,
16 yes.

17 Q. Did Mr. Lombardo -- go ahead.

18 A. We originally were -- went up there to fire
19 him because of that.

20 Q. But you, ultimately, didn't fire him at
21 that point, correct?

22 A. No, we did not. Leslie said, Rick's a bad
23 boy, but he is my bad boy, and I am going to help him.

24 Q. In your offer letter of employment,
25 Mr. Lombardo was entitled to annual merit increases,

1 correct?

2 MR. SATTERWHITE: I am going to object to
3 the form. If you are talking about a specific
4 document, we will be glad to look at it.

5 A. No one in this world is entitled to annual
6 merit increases, not even me.

7 Q. I am going to show you what's been marked
8 Defendant's Exhibit E.

9

- - - - -

10 (Thereupon, Previously Marked
11 Deposition Exhibit E, Copy Copy of
12 Letter Dated 2/3/15 to Richard
13 Lombardo, Bates CHMURA000097, was shown
14 for purposes of identification.)

15

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16 Q. I will let you control and take a look at
17 that.

18 A. (Reviewing.)

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. What is it?

22 A. It's an offer letter, I believe.

23 Q. And you will see right there in the center
24 it says, "After three months of employment, you will
25 also be eligible for annual merit increases upon

1 approved performance by your management." Do you see
2 that?

3 A. I sure do.

4 Q. Did Mr. Lombardo request an annual merit
5 increase during his employment there?

6 A. Multiple times.

7 Q. And did he ever receive one?

8 A. I believe he did one year. It wasn't a
9 merit increase. It was a cost of living increase. He
10 was compensated very well, and our expectation was that
11 he would be getting higher salary or higher pay as he
12 was successful as a salesperson.

13 Q. Going back to the Paragraph 25 of
14 Exhibit D. Now, what you called a falsified letter,
15 that occurred in March of 2019, correct?

16 MR. SATTERWHITE: Sorry, Christine. You
17 broke up a little bit on our end.

18 Q. Sure. The letter you referred to you said
19 Lombardo, according to you, falsified, that incident
20 occurred early 2019, correct?

21 A. Correct.

22 Q. Was it in -- do you recall what month that
23 happened?

24 A. It was either February or March. It was
25 cold in Cleveland.

1 Q. So that was well before Mr. Auerbach talked
2 to Mr. Lombardo about the change or revising the
3 commission structure, correct?

4 A. Correct.

5 Q. I want to turn to Paragraph 30 and 31 of
6 the Amended Complaint in Exhibit D.

7 A. (Reviewing.)

8 Yes, I have read 30 and 31.

9 Q. Paragraph 30 says, "Second, Lombardo
10 threatened to accept a position with one of Chmura's
11 competitors, in violation of the Agreement." What is
12 the factual basis for that sentence?

13 A. Okay. And going on it says, "Lombardo
14 indicated that this was not an idle threat because he
15 had already discussed employment with at least one
16 competitor." And we have a letter from EMSI where --
17 once again, here this is Rick lying whenever it suits
18 his purpose. So we have a letter from EMS that Rick
19 spoke to someone at that IEDC event; again, the event
20 that we pay all this money to attend where he is
21 supposed to bring us a return on investment from that.

22 So Rick met with someone from IEDC and was
23 trying to talk to that person about whatever -- being
24 available to work there. So, clearly, EMSI did not
25 offer him a job, as he said that they did, but -- so

1 the fact of the matter is, we have an email that
2 validates this.

3 Q. What is the date of that email?

4 A. It was right after the conference, so it
5 was upwards towards October. I believe the email
6 probably was dated whenever the conference ended,
7 October 2019 thereabout.

8 Q. What's the substance of the -- the
9 substance of that email?

10 A. Rick was trying to meet with the -- get a
11 phone call with the EMSI guy.

12 Q. Does the email say anything about
13 employment?

14 A. I don't recall that.

15 Q. To your knowledge, did Mr. Lombardo ever
16 accept a position with one of Chmura's competitors?

17 A. Not to my knowledge.

18 Q. Paragraph 31 states that, "Third, Lombardo
19 threatened to contact all of Chmura's clients, despite
20 the Agreement's non-solicitation provisions, so that he
21 could persuade them to take their business elsewhere."

22 What's the factual basis for that
23 statement?

24 A. He made that statement to Auerbach. He
25 made that statement as well to other employees.

1 Q. What other employees?

2 A. I believe, at least, Stephanie. I am not
3 sure who else.

4 Q. What's Stephanie's last name?

5 A. Is it Wiley? I am not good with names. I
6 do well to get every one's first name right. But she
7 is in Cleveland. Sorry.

8 Q. To your knowledge, did Mr. Lombardo contact
9 any of Chmura's clients to persuade them to take their
10 business elsewhere?

11 A. Not to my knowledge at this point.

12 Q. I want to turn to Paragraph 34 of the
13 Complaint, the Amended Complaint of Exhibit D.

14 A. (Reviewing.)

15 Okay.

16 Q. Paragraph 34 states that, "In that letter,
17 you made several requests to enable it to secure both
18 its confidential information and its customer
19 relationships." Do you see that?

20 A. Yes.

21 Q. What letter is that referring to?

22 A. Paragraph 33 might provide it.

23 Oh, it's the separation contract, the cease
24 and desist letter. That's the letter.

25 Q. And do you know when that cease and desist

1 letter was sent?

2 A. That would have been probably a day or two
3 after we told him to go home and not come back until he
4 heard from leadership.

5 Q. Who sent the letter to Mr. Lombardo?

6 A. I believe counsel would have sent that
7 letter, but I'm not sure.

8 Q. Other than that letter, were any other
9 requests made?

10 A. I'm sorry, were any other what's made?

11 Q. Requests, that are referenced in Paragraph
12 34, made to Mr. Lombardo?

13 A. Certainly, Mr. Auerbach requested that the
14 computer be returned previously.

15 Q. Do you know when Mr. Auerbach made that
16 request?

17 A. Not off the top of my head, but I believe
18 it's in his affidavit.

19 Q. Other than the letter, the cease and desist
20 letter and the request my Mr. Auerbach, were there any
21 other requests made, to your knowledge?

22 MR. SATTERWHITE: Object to the form.

23 A. Not that's coming to my mind right now.

24 Q. Did Mr. Lombardo ultimately return the
25 computer?

1 A. Ultimately, but the names were so stale, we
2 were not able to get any value out of it.

3 Q. Do you recall when Mr. Lombardo returned
4 that computer?

5 A. I believe it was sent as a Christmas gift.

6 Q. Around December 25th; is that correct?

7 A. That's correct.

8 Q. Turn to Paragraph 37 and take a look at
9 that.

10 MR. SATTERWHITE: Did you say 37?

11 MS. COOPER: I did. I did.

12 A. (Reviewing.)

13 I'm done reading it.

14 Q. Paragraph 37 states, "Further, despite
15 specific requests, Lombardo also failed to return a
16 Chmura computer which contained customer contacts,
17 pricing data, and other highly confidential Chmura
18 information." Do you see that?

19 A. Yes.

20 Q. How were -- when you received one of those,
21 how was the customer contact -- let me rephrase that.

22 How were custom contacts stored on the
23 computer?

24 A. They were stored in an Excel document.
25 They were also stored in his Outlook -- his mail.

1 Q. Was the Excel document you are referring to
2 on his desk top, his document folder? Where was it on
3 the computer?

4 A. That information I don't have. We never
5 looked at the computer, but the counsel has taken care
6 of that and sent information to us from the laptop.

7 Q. What about pricing data? How was the
8 pricing data stored?

9 A. That was most likely in an Excel
10 spreadsheet, our pricing spreadsheet.

11 Q. You said most likely. Do you know for sure
12 how it was stored?

13 A. Well, that is how it was stored. I don't
14 know if he took it out of the Excel sheet and copy and
15 pasted it into a Word document or PowerPoint. I don't
16 know what he did with it. In any case, it was there.

17 Q. Do you have a Word document that shows he
18 copy and pasted any information?

19 A. No, I don't. I was just saying it could
20 have been in one of those forms, but my recollection is
21 that it is an Excel document. I guess the form doesn't
22 matter. The fact that it was there is what's
23 important.

24 Q. But those documents were there on a
25 computer issued by Chmura, correct?

1 A. That's correct.

2 Q. What other highly confidential information
3 does Paragraph 37 refer to?

4 A. Well, he had -- in all of his emails, he
5 had licenses. He had names of customers. He had the
6 dollar amount of their contract. He had information
7 about our road map, things that we're adding to JobsEQ
8 that we wouldn't want our competitors to know about.

9 Q. Mr. Lombardo was placed on unpaid leave,
10 correct?

11 A. Correct.

12 Q. Do you recall when he was placed on unpaid
13 leave?

14 A. Again, I don't have that date in front of
15 me. That's one I should have looked up to have, but I
16 don't have that. It was in October. October 2019.
17 Correct.

18 Q. When he was placed on unpaid leave, what
19 actions were taken to procure his computer?

20 A. When he was -- when we made a phone call --
21 when we learned how belligerent Mr. Lombardo was being,
22 we asked Eli to walk him out of the office and tell him
23 not to come back until leadership discussed it. At
24 that very moment, his access to JobsEQ was shut off.
25 His ability to get into any Chmura software was cut

1 off. And, of course, the reason for this was because
2 he was out of control, belligerent, and there was no
3 way for us to know what he would do next.

4 Q. Chmura uses Office 365, correct?

5 A. I believe so.

6 Q. Did Chmura turn off access to Office 365?

7 A. That would be a question for John Chmura,
8 but --

9 Q. Did -- and this may be a question for John
10 as well, so just tell me if it is. Did Chmura have any
11 software on the computer where it could log in remotely
12 to that computer?

13 A. Yes, that will be John Chmura.

14 Q. I will ask those questions of him, then.
15 If you look at paragraph -- just read
16 through Paragraph 38.

17 A. (Reviewing.)

18 Yes.

19 Q. This paragraph also references the notes on
20 the computer that you testified about earlier, correct?

21 A. Correct.

22 Q. Were the prospective customers that
23 attended those conferences be available to others to
24 speak to as well?

25 MR. SATTERWHITE: We object to the form.

1 Go ahead.

2 A. Would the prospective customers be
3 available to others to speak to as well? The answer
4 is, yes, but you can't speak to someone if you don't
5 know who their name is. And we didn't have the names
6 of any of those people. They were --

7 Q. Did you have any -- sorry. Were there --
8 MR. SATTERWHITE: Were you finished your
9 answer?

10 A. I am finished. Go ahead.

11 Q. Were Chmura competitors at the IEDC
12 conference?

13 A. Yes, recall that Rick spoke to EMSI looking
14 for -- being available for a job. This is where he
15 claims that they offered him a job. He claimed that
16 when he was leaving the company, the day he was so
17 disgruntled.

18 Q. But you have no basis for believing that he
19 was actually offered a job by EMSI, correct?

20 A. No, oftentimes, Rick lied, as we found.

21 Q. With respect to that -- well, in Paragraph
22 38, the third line from the end, it says that the
23 computer notes from those two conferences summarized
24 terms relating to Chmura's prospective relationship.
25 What is the summarized terms that this paragraph refers

1 to, if you can just describe it for me?

2 A. (Reviewing.)

3 Well, what we typically do is whoever is in
4 charge taking notes will have the name of the person,
5 would have who they work for, and then will have some
6 notes such as: I gave Mr. So-and-So a demo of about 10
7 to 15 minutes. They were very impressed with certain
8 analytics. He asked us to follow up with him next week
9 to provide a full demo.

10 Q. If you could, turn to Paragraph 63 of
11 Exhibit D.

12 MR. SATTERWHITE: You did say 63, right?

13 MS. COOPER: I did, yes.

14 A. (Reviewing.)

15 Okay. Yes.

16 Q. Can you explain -- it states, "Further, it
17 would be inequitable for Lombardo to benefit from his
18 threatened breaches by diverting Chmura' customers to a
19 competitor during the restricted period."

20 What benefit did Mr. Lombardo obtain?

21 MR. SATTERWHITE: Object to the form.

22 A. Well, he threatened to sell our customer
23 client lists. The benefit to him --

24 Q. How did Mr. Lombardo -- I'm sorry. I
25 didn't mean to cut you off. I wasn't looking at the

1 video. Go ahead.

2 A. The benefit to him would be the sales
3 price.

4 Q. But how did he benefit by having the sales
5 price?

6 MR. SATTERWHITE: Same objection.

7 THE WITNESS: Can we go further back up? I
8 want to see what this is with regard to.

9 MR. SATTERWHITE: Yeah. Where do you
10 want --

11 THE WITNESS: Is there like a statement at
12 the top of this?

13 MR. SATTERWHITE: (Indicating).

14 THE WITNESS: Okay, Declaratory Judgment.
15 Okay.

16 (Reviewing.) All right. Paragraph 63?

17 MR. SATTERWHITE: She is asking you about
18 63.

19 A. It was a threatened breach. We do not know
20 if he benefitted or not. Again, Rick is not one to be
21 honest.

22 Q. Do you have any basis for believing that
23 Mr. Lombardo, in fact, diverted customers to a
24 competitor during the restricted period?

25 A. Not at this point in time.

1 Q. Other than -- and we will get to this in
2 more detail later, but other than attorneys fees, does
3 the first Amended Complaint seek any monetary relief?

4 MR. SATTERWHITE: Objection to form.

5 Q. If you go to Page 14 and take a look at
6 Page 14.

7 A. Now, where on Page 14 are we looking?

8 Q. My question -- whatever you need to look
9 at, my question is, does the Amended Complaint seek
10 monetary -- any monetary relief other than attorneys
11 fees?

12 A. That's a question for our counsel here. I
13 am not an attorney, so I don't know how to answer that.

14 MS. COOPER: I am going to move way from
15 this exhibit. If we could, take a short restroom
16 break.

17 - - - - -

18 (Short break off the record.)

19 - - - - -

20 MS. COOPER: Back on the record.

21 BY MS. COOPER:

22 Q. I am going to close Exhibit D and go back
23 to Defendant's Exhibit A which is an exhibit to the
24 deposition. You were also designated to testify
25 regarding Item Number 3, "The damage allegedly

1 sustained by Chmura as a result of Mr. Lombardo's
2 purported actions"; is that correct?

3 A. Correct.

4 Q. Can you tell me, what is each type of
5 damage that Chmura is seeking?

6 A. The damages that we refer to as that
7 greater than 100,000 that we already discussed: The
8 five demos, or five contracts that we should have
9 gotten, at least, out of the IEDC and the Texas event,
10 times 8,000 average selling price, 40,000; then present
11 value of that four years from -- with a 2% discount
12 rate, and then some function about non-renewal.

13 Q. Are there any other damages you are seeking
14 against Mr. Lombardo?

15 A. The attorneys fees that are relative to the
16 Confidentiality Agreement breach.

17 Q. Anything else? Any other damages?

18 A. Not at this point.

19 Q. You have also been designated to talk about
20 "The calculation of each element of damage allegedly
21 sustained by Chmura as a result of Mr. Lombardo's
22 purported actions," Item Number 4 on the Notice of
23 Deposition, Exhibit A, correct?

24 A. Correct.

25 Q. And you have taken me through the

1 calculation, but I'd like you to slow it down for me.
2 It's hard to get it all down. What is the specific
3 amount of damages that Chmura is seeking with respect
4 to those five contracts?

5 A. Well, you know, in addition to --

6 MR. SATTERWHITE: Object to the form. Go
7 ahead. Sorry.

8 A. In addition to that, we have, you know, the
9 \$25,000 that we pay to be a sponsor. So when we go to
10 these conferences and we get names and we follow-up on
11 them because they ask to do a demo, our historical demo
12 rate is about 24%. So I looked at the number of people
13 who requested a demo, and then we assume that 24% would
14 become a licensee. So that turned out to be five. But
15 8,000 is the average selling price. The 8,000 times
16 five I believe is 40,000. So in year one, we had
17 \$40,000. In year two, we take that present value based
18 on 2% inflation rate.

19 Q. What is that present value?

20 A. I'm sorry?

21 Q. What is the present value? Can you explain
22 that for me?

23 A. The present value is a financial term to
24 identify what a future string of earnings is worth
25 today.

1 Q. So you have \$40,000 in year one?

2 A. Yes.

3 Q. What is the present value dollar amount for
4 year two?

5 A. For the second year, the formula of present
6 value equals the -- you know, the 40 thousand divided
7 by 1 plus .02, in the parentheses, raised to the second
8 power. In the third year, you raise it to the third
9 power, et cetera. Then you use some --

10 Q. So what is the sum of those numbers?

11 A. The number I gave earlier, I believe, was
12 197-\$198,000. Now, we are very conservative on this.
13 We are very conservative. We could have used more
14 years, but we just used four years because the bulk of
15 our customers we've gotten in the last four years.
16 But, certainly, we have customers that have been with
17 us for 10 or 15 years, so we could have justified using
18 a much longer period of time, which would have made the
19 value higher.

20 Q. That \$8,000 average selling price that the
21 calculation is based, is that the same price that would
22 have been paid in year two and year three and year
23 four?

24 A. That's a good point. It would have been
25 higher because you raise it by the cost of living every

1 year. So we -- you just pointed out an error that
2 caused this number to be lower than it should have been
3 otherwise. We can correct and revise.

4 Q. My question is, is the renewal price the
5 same --

6 A. No --

7 Q. -- as the sales price?

8 A. No, every year the renewal point goes up to
9 reflect the cost of living. So I can't remember right
10 now if it was 2% or 3% that we used. So every year --
11 if you paid 8,000 the first year, the next year you pay
12 8,000, you know, times 1.02. So it would be 8,000, you
13 know, 2 or 300, whatever.

14 Q. To your knowledge, have you produced the
15 documents that you are relying on for this calculation
16 in Discovery?

17 A. Yes. Yes.

18 Q. Can you tell me specifically what those
19 documents were -- or are?

20 A. It's an Excel spreadsheet. That's, at
21 least, what I provided. I would expect that's what was
22 sent on to you.

23 MS. COOPER: Rod, can you confirm that that
24 spreadsheet was sent and provided?

25 MR. SATTERWHITE: I cannot confirm sitting

1 here today, but I will certainly check on it.

2 MS. COOPER: If you would, that would be
3 great.

4 MR. SATTERWHITE: Sure.

5 BY MS. COOPER:

6 Q. Dr. Chmura, the numbers that you -- well,
7 let me ask this, did you create that Excel spreadsheet
8 you are referring to?

9 A. Greg created that Excel spreadsheet for me.

10 Q. I'm sorry, who did?

11 A. Greg Chmura created the Excel spreadsheet
12 for me.

13 Q. And was that at your direction?

14 A. Yes.

15 Q. Did you tell him how to do the calculation?

16 A. No, it's a simple thing, and Greg is a very
17 smart guy. He has a degree in math and physics, a dual
18 degree that he got in three years. The present value
19 is a simple concept that any financial person would
20 use.

21 Q. What documents were relied on to create
22 that spreadsheet? I want to know what information was
23 relied on to make that spreadsheet?

24 A. Well, the beginning documents were
25 eventually what we got from the computer that Rick was

1 holding on to. So it was several pages of notes from
2 the two conferences we referred to.

3 Q. Do you know if those notes were produced in
4 Discovery?

5 A. Sorry, can you say that in English?

6 Q. Did you turn over those notes to
7 Mr. Lombardo's counsel?

8 A. Well, they were on Mr. Lombardo's computer.
9 I would think that they were turned over to you.

10 Q. Now, you indicated that in your
11 calculation, you used 24% for the demo rate coming out
12 of a conference; is that correct?

13 A. We used 24% at -- if we give the -- based
14 on the number of people that sign up for a tool, that
15 have seen a demo, yes, 24%.

16 Q. What information did you use to come up
17 with that number, that percent?

18 A. We are a data company, and so we keep track
19 of all of our sales, all of the demos. And we have a
20 running rate of the demo-to-sales rate.

21 Q. How is that tracked? In what program is
22 that tracked?

23 A. That is something that Greg Chmura does. I
24 would -- I would expect he has an Excel file where he
25 is pulling that data into.

1 Q. So what is he pulling it from?

2 A. Probably out of Salesforce.

3 Q. Do you know how many people that ask for a
4 demo from a sales conference actually end up getting a
5 demo or having a demo?

6 A. No. I do know that at the last IEDC event
7 we went to -- I was looking at some data -- we didn't
8 have as many people there, and there were several.
9 Whenever I give a presentation, it would -- you know, a
10 primary opens a session, that typically bumps up the
11 number of people that end up asking for a demo and
12 buying the product, licensing the product.

13 Q. The 8,000 average selling price that you
14 used in this calculation -- that was used in this
15 calculation, what documents did Chmura use to come up
16 with the \$8,000 average selling price?

17 A. Similar to what -- we take all this data,
18 so similar to us getting the demo-to-sale ratio, we
19 keep track of all of the sales over time, as well as
20 per month.

21 Q. And is that information also kept in
22 Salesforce as well?

23 A. I would expect that some of it is in
24 Salesforce, but I would expect that Greg pulled that
25 out and had an Excel sheet that he keeps it in because

1 when he gives us his monthly sales team meeting, he
2 shows us historically what it looks like, so. It is
3 also in Excel.

4 Q. And why was the rate of 2% used in the
5 present value determination?

6 A. Well, that's a good question, and we could
7 use it -- you can argue different rates. 2% is about
8 the rate of inflation, so that would be one likely
9 choice. Another choice would be if you put the money
10 in a bank, what would be the interest rate you'd get?

11 Q. Do you know whether Chmura had turned over
12 the Salesforce documentation that went into this
13 calculation, over to Mr. Lombardo -- or counsel for
14 Mr. Lombardo?

15 A. I would expect that that has not been.

16 Q. And do you know why it wouldn't have been?

17 A. Because you didn't ask for it? I'm not
18 sure.

19 Q. Are there any other damages calculations --
20 sorry.

21 We covered the damages that Chmura is
22 taking. Is Chmura taking any other -- we talked about
23 attorney fees, and we talked about the \$198,000. Are
24 there any other damages that Chmura is seeking?

25 MR. SATTERWHITE: Object --

1 Withdraw the objection. Go ahead.

2 A. Well, I guess that would be a discussion
3 that would have to have with our counsel if, you know,
4 we go over and end up in court.

5 Q. Dr. Chmura, you were designated as the
6 witness to speak about the damages sustained by Chmura
7 and the calculation of each damage; therefore, I will
8 ask again. Other than the \$198,000 that you already
9 testified to and the attorneys fees, are there any
10 other monetary damages that Chmura is seeking, as you
11 sit here today?

12 A. As we sit here today, no.

13 Q. I am going to move into the customer list,
14 the two customer -- not -- sorry, the two conference
15 notes that had lists of potential customers on them.
16 Do you recall what customers, or potential customers,
17 were listed on those conference notes?

18 A. There were like 50 names. I don't recall.
19 I read it maybe two weeks ago.

20 MR. SATTERWHITE: I will just note an
21 objection for the record. We objected to that category
22 for that very reason, that she doesn't need to be
23 expected to memorize customer names at that volume.

24 Q. Was that 50 names per conference or 50
25 names total, roughly?

1 A. If we are talking total -- I don't want to
2 to guess, but it -- I don't want to guess. I want to
3 go back and look at it fully.

4 Q. Did any of the customers, or potential
5 customers on that list, enter into a subscription
6 agreement or a license agreement with Chmura?

7 A. There was one that I mentioned earlier that
8 walked up to Rick and said that -- asked Rick to send
9 the agreement for him to sign. So that indicated to me
10 that it was a sale that came outside the IEDC. I did
11 not include that as one of those that we did not get.

12 Q. So that was not included in your
13 calculation that we just went over?

14 A. That's correct.

15 Q. And can you explain the reason for that
16 again, why it wasn't included?

17 A. Because that was the not honest. That
18 client -- it was clear that Rick already had a
19 relationship with that client and had been working with
20 that client, had given that client a demo prior to the
21 conference, and he was at the point where he was ready
22 to sign. But just because he walked up to the
23 conference booth then, Rick put his name on the list
24 and did not think they were for us to suggest that that
25 wasn't attributed to him, or that it was attributed to

1 the conference, not to him.

2 Q. So in discriminating which potential
3 customers to include, did you review each individual
4 one?

5 A. Did I -- I'm sorry, did I review each
6 individual what?

7 Q. Review potential customer on the list
8 before including it in your calculation?

9 A. Yes, I read that -- I read that list myself
10 and identified which ones wanted a demo, and then we
11 gave it to the salespeople to follow-up with.

12 Q. And how did you determine which ones to
13 include in your calculation?

14 A. They said, "Please call me back next week
15 to give me a demo," or "Please call me in one month to
16 give me a demo."

17 Q. And upon receiving those customers notes,
18 did anyone from Chmura follow-up with those potential
19 customers?

20 A. Yes.

21 Q. And have any of those potential -- other
22 than the ones that we talked about, any of those other
23 potential customers entered into any contract with
24 Chmura?

25 A. Not that I know of at this point in time.

1 In fact, most of them wouldn't even return our phone
2 calls.

3 Q. Do you know how frequently they were
4 called? Let me rephrase that.

5 Do you know how frequently they were
6 contacted by Chmura after the notes were received?

7 A. We call -- again, if this was an October
8 conference, we got it at the end of December. Our
9 counsel had to make sure it was properly prepared for
10 us, so we got the list maybe mid January, pretty stale,
11 and they were contacted more than once.

12 Q. You were designated as the witness to
13 testify to Topic Number 6, "Closing ratios for each
14 account manager, senior account manager or other sales
15 representative of Chmura from February 2015 through
16 December 31, 2019"; is that correct?

17 A. I don't recall being designated for that
18 one. That sounds more like Leslie Peterson.

19 Q. Okay. Let me show you -- while I am
20 opening up another exhibit, I will ask you a follow-up
21 question to one of my prior questions. Do you know how
22 many contacts it typically takes to secure a demo?

23 A. How many contacts?

24 Q. Yes. How many contacts would it take from
25 an initial contact to that contact asking for a demo?

1 MR. SATTERWHITE: Object to the form.

2 A. It could take multiple contacts. It could
3 take years to get a client. For example, there are
4 some people that we have been talking to for 10, 15
5 years and then they finally decide to get a license.

6 Q. I am going to show you what's been marked
7 Defendant's Exhibit B.

8 - - - - -

9 (Thereupon, Deposition Exhibit B, Copy
10 of Plaintiff's Designations and
11 Objections to Richard Lombardo's Notice
12 of Deposition, was marked for purposes
13 of identification.)

14 - - - - -

15 A. (Reviewing.)

16 Do you want us to scroll to something?

17 Q. Yeah, you can go ahead and scroll through
18 and take a look at this.

19 A. Okay.

20 MR. SATTERWHITE: (Indicating). I am just
21 guessing this is what she is going to ask you about.

22 MS. COOPER: Yes, that's where I am going.

23 Q. Have you seen this document before?

24 A. Oh, yes.

25 Q. And Exhibit B is, "Plaintiff's Designations

1 and Objections to Richard Lombardo's Notice of
2 Deposition, Pursuant to Federal Rule Civil Procedure
3 30(b)6", correct?

4 A. So closing ratio is what I have been giving
5 to you, that's 24%. Of those people that we demo, on
6 average 24% of them end up getting a license or
7 requesting a license.

8 Q. You are a little ahead of me. You are a
9 little bit ahead of me. You answered the question I
10 was going to ask, but let me ask the question and you
11 give me the answer, if you don't mind.

12 So the closing ratio, you will see, you
13 were designated as to the limited portion of Topic
14 Number 6, "Closing ratios for each account manager,
15 senior account manager or other sales representative of
16 Chmura from February 2015 through December 31, 2019",
17 correct?

18 MR. SATTERWHITE: Object to the form. I
19 mean, I don't understand the question. She was
20 designated by a more limited basis than what you just
21 read, and maybe I just misheard you. But she has
22 agreed to testify with respect to the overall ratio,
23 not with respect to individual account managers.

24 MS. COOPER: Correct.

25 BY MS. COOPER:

1 Q. So, Dr. Chmura, you were designated to
2 testify to a limited portion of -- or a limited scope
3 of Topic Number 6, correct?

4 A. Yes.

5 Q. And it is your testimony that the 24%
6 figure that we have discussed is the closing ratio for
7 customers who request JobsEQ demos; is that correct?

8 A. Correct. It varies over time, but that is
9 the average.

10 Q. And over what period of time did you look
11 at -- or did Chmura look at to come up with that 24%?

12 A. From what I am seeing in mind is at least
13 one year. Could be two years.

14 Q. And what did you look at?

15 A. Well, hold on, let me think. Let me think.
16 I believe it's over, like, the past four years. That's
17 my recollection.

18 Q. And that would have been over the four
19 years that Mr. Lombardo was employed at Chmura,
20 correct?

21 A. That would include that period.

22 Q. And would it also include the period of
23 time Austen Steele was employed at Chmura?

24 A. Yes.

25 Q. Can you explain to me the difference

1 between an account manager and a senior account
2 manager?

3 A. A senior account manager has been there
4 longer than an account manager and probably has more
5 experience.

6 Q. Upon Mr. Lombardo's termination, did
7 Chmura have any senior account managers?

8 A. I believe Wilson Cox was a senior account
9 manager.

10 Q. Do you know, and this is not going to
11 topic, but do you know how many account managers Chmura
12 had upon Mr. Lombardo's termination?

13 A. I believe four.

14 Q. When did -- or has -- has Chmura hired any
15 new account -- {audio distortion}.

16 (Reporter asked for clarification).

17 Since Mr. Lombardo's termination, has
18 Chmura hired any new account managers?

19 MR. SATTERWHITE: Object to the scope.

20 A. I believe we've hired two.

21 Q. Do you know the current number of account
22 managers that Chmura has?

23 A. I believe --

24 MR. SATTERWHITE: Same objection.

25 A. I believe we have six.

1 Q. Do you know -- let me strike that.

2 What is the overall renewal ratio for

3 JobsEQ?

4 A. It's about 83%, but it varies based on how
5 long they have been with us.

6 Q. What is -- over what period of time is that
7 83% calculated?

8 A. That's been holding up for at least the
9 last couple of years.

10 Q. What period of time are you looking at to
11 come up with that 83% figure? Is it each year? Is it
12 over the history of the company?

13 A. No, 2019/2018. And, again, it varies
14 because if someone has been with us for three years,
15 then the ratio of them staying is higher, than the
16 average --

17 Q. The average is 83%. Do you know what the
18 ratio is for those customers that is over three years,
19 or three years and above?

20 A. I don't have that in my mind.

21 Q. How about for two years?

22 A. I don't have that in my mind.

23 Q. I'll ask one year as well.

24 A. 83% is the average.

25 Q. I want to go to Topic Number 14. If you

1 look at Exhibit A -- you can look at Exhibit A or B,
2 but we will look at Exhibit A.

3 A. (Reviewing.)

4 Q. Tell me when you are ready.

5 A. I'm ready.

6 Q. Topic Number 14 is, "Classification of
7 decisions related to the classification of account
8 managers and senior account managers prior to, during
9 and after Mr. Lombardo's employment at Chmura,
10 including the information and/or advice considered by
11 Chmura in classifying account managers and senior
12 account managers as exempt or non-exempt, and the
13 factors considered."

14 You are designated as the corporate
15 representative to testify on this topic, correct?

16 A. Correct.

17 MR. SATTERWHITE: I am going to object. We
18 limited it.

19 Q. Okay. It was limited by counsel to,
20 "Decisions following Mr. Lombardo's departure are not
21 relevant to the claims or counterclaims in this
22 litigation". However, you are still designated as the
23 corporate representative for decisions made prior.

24 During the time of Mr. Lombardo's
25 employment, how were account managers classified? Were

1 they classified as exempt or non-exempt?

2 A. They were classified as exempt for most of
3 them.

4 Q. And what about senior account managers?
5 How were they classified?

6 A. The same.

7 Q. Why did Chmura classify account managers
8 and senior account managers exempt?

9 A. Because we saw them no different than we
10 saw the economists, the data scientists, the computer
11 technicians. They are professionals who we require
12 them to have a B.S. Degree, so they are not someone
13 that comes off the street from high school and can
14 sell, you know, vacuum cleaners. This is someone that
15 takes three to six months to learn JobsEQ.

16 They get a lot of training, and they sell
17 to a very sophisticated audience, and they provide a
18 lot of input. There is a person between us and the
19 client, and we tell them that you need to have your
20 best foot forward because you often are the first face
21 of Chmura Economics & Analytics. They bring
22 information to us from the client; for example, what
23 sort of analytics that they like, what needs to be
24 added.

25 They get very involved in conferences.

1 They tell us which conferences that we should be
2 attending. Once they have gone to them, they come back
3 and give us feedback.

4 They are -- they make a lot of
5 contributions. They look at our marketing material.
6 They make suggestions on marketing. They make their
7 suggestions on strategies.

8 Early on, Economic Development and
9 Workforce were some of the biggest areas of our
10 clients. Our competitor, EMSI, started out in the
11 education sector, and Mr. Lombardo refused to -- he had
12 the ability to choose which markets he wanted to try to
13 sell into, and he refused to market to education
14 because he felt that our tool would not par with EMSI.
15 And so he continued to give us some feedback, and we
16 added a lot of analytics in that regard, to the degree
17 that we are now making great progress on the education
18 vertical.

19 Q. Do you know where that feedback came from?

20 A. I'm not sure what you mean.

21 Q. Was Mr. Lombardo simply passing on what he
22 heard from Chmura customers?

23 MR. SATTERWHITE: Object to the form.

24 A. We expected him to provide feedback from
25 the customers. We have a road map, so that is product

1 that we are adding to JobsEQ. And it was very
2 important for our account managers to obtain
3 information so that we could add it to the road map.

4 And every time another person asked for it,
5 we got another check. So if plenty of people asked for
6 us to add block level data, then we pushed that higher
7 up on the road map than, say, changing our colors from
8 blue to green for only one person.

9 Q. So you were counting on feedback from
10 outside sources, persons outside of Chmura, to make
11 those decisions, correct?

12 A. Correct.

13 Q. Did Chmura rely on any information in
14 making the decision to classify account managers,
15 senior account managers as exempt?

16 A. No.

17 Q. Did Chmura rely on the advice of counsel to
18 make that decision?

19 A. No.

20 Q. What factors did Chmura rely on making the
21 decision to classify the account managers and senior
22 account managers as exempt?

23 MR. SATTERWHITE: Object to the form.

24 A. Well, their duties. We saw them no
25 differently than we saw someone who was a data

1 scientist.

2 Q. What degree does a data scientist require
3 to be employed at Chmura?

4 A. A B.S. Degree. Sometimes it is a Master's,
5 but a B.S. Degree.

6 Q. And are the job duties different for an
7 account manager and senior account manager than for a
8 data scientist?

9 A. Of course. The account manager is dealing
10 with sales all day long, and the data scientist is
11 dealing with numbers and programs.

12 Q. Just for my understanding, what does a data
13 scientist do?

14 A. A data scientist would vary. They could
15 look for standard deviations in errors in the JobsEQ.
16 They would test JobsEQ to see if there are any issues
17 with it. They may -- they may write in blogs for us.
18 Right now we are running a lot of the blogs from
19 Covid-19 related to job postings.

20 Q. Were any members of -- sorry. Were any
21 account managers or senior account managers ever
22 classified as non-exempt prior to Mr. Lombardo's
23 termination?

24 A. No.

25 Q. Did Chmura have any employees that were

1 classified as non-exempt during Mr. Lombardo's
2 employment?

3 A. We had some interns who checked their time
4 sheet, and if worked over 40 hours, would receive
5 overtime.

6 Q. Were there any other employees that were
7 classified as non-exempt?

8 A. Not to my knowledge.

9 Q. Mr. Lombardo was classified as an exempt
10 employee, correct?

11 A. Correct.

12 Q. Other than what you already testified to,
13 did Chmura rely on any other information in making a
14 decision to classify Mr. Lombardo as exempt?

15 A. No.

16 Q. Currently, how are your account managers
17 classified?

18 MR. SATTERWHITE: Object to the scope.

19 A. Depends on their duties.

20 Q. How do you determine which account manager
21 is classified as exempt and classified as non-exempt?

22 MR. SATTERWHITE: Object to the scope.

23 A. Depends on their duties and their annual
24 earnings.

25 Q. Are there certain account managers that are

1 currently classified as exempt?

2 MR. SATTERWHITE: Same objection. Do you
3 just want to do a standing objection? She can answer
4 in her individual capacity and I will be quiet that
5 way.

6 MS. COOPER: Okay.

7 MR. SATTERWHITE: Go ahead.

8 A. Yes.

9 Q. I am going to Topic 18, "Employee handbook
10 produced by Chmura in response to Mr. Lombardo's First
11 Set of Document Requests Directed to Chmura." You have
12 been designated as the corporate representative to
13 testify on this topic. I am going to show you what's
14 been marked as Exhibit Q.

15 - - - - -
16 (Thereupon, Deposition Exhibit Q, Copy
17 of Chmura Employee Handbook Dated
18 7/19/2019, was marked for purposes of
19 identification.)

20 - - - - -
21 Q. You can go ahead and take a look at that.

22 A. (Reviewing.)
23 Okay, I am familiar with this.

24 Q. Okay. Give me a moment.
25 What is this document?

1 A. The employee handbook.

2 Q. And is it a true and accurate copy -- well,
3 it is dated July 19, 2019, correct?

4 A. Correct.

5 Q. And is it a true and accurate copy of the
6 handbook that existed as of July 19, 2019?

7 A. Yes.

8 Q. Were there other versions of the handbook
9 prior to July 19, 2019?

10 A. I'm sure there were.

11 Q. Does Chmura maintain copies of those?

12 A. I don't have an answer to that.

13 Q. Did Mr. Lombardo sign an acknowledgment of
14 receipt of this July 19, 2019 handbook?

15 A. My -- I believe he did, yes.

16 Q. And would that be in his personnel file?

17 A. I would expect it would be, but I haven't
18 looked at his personnel file.

19 Q. I want to turn your attention to Page 5.
20 It is marked Chmura 000053 at the bottom.

21 Let me ask the question before you get
22 there. This handbook contains certain of Chmura's
23 employment policies, correct?

24 A. Yes.

25 Q. Does this contain all of the policies for

1 Chmura?

2 MR. SATTERWHITE: Object to the form. Go
3 ahead.

4 A. I'm not certain if it does.

5 Q. If you look at -- or scroll to the Travel
6 Policy Section, take a look at that and let me know
7 when you're ready.

8 A. Okay.

9 Q. It states that "All arrangements for
10 airfare and hotel should be approved by your supervisor
11 who will then send it outside of your department, i.e.,
12 to the director of operations for final approval." Do
13 you see that?

14 A. I certainly do.

15 Q. Who is the director of operations?

16 A. Sharon Simmons currently is.

17 Q. And was she the director during the time of
18 Mr. Lombardo's employment?

19 A. Not entirely. Laura Leigh Savage preceded
20 her.

21 Q. Did employees have to obtain approval prior
22 to -- according to this, employees had to obtain
23 approval prior to making travel arrangements, correct?

24 A. We can thank Mr. Lombardo for this one as
25 well. So when you make policies, you can't make it for

1 just one person, but if you have one bad apple, you
2 have to make sure everyone falls under the same policy.
3 So Mr. Lombardo had the practice of wanting to make
4 sure that his, I believe it was American Airlines,
5 points were high so that, presumably, he could take
6 vacations at a lesser cost.

7 So he would go out and get a ticket for
8 \$400, as an example, when all other employees flying
9 out of Cleveland were able to fly for 200. So,
10 clearly, that's a practice that we like employees to,
11 you know, fly at reasonable times, but we also expect
12 them to not -- not take tickets that are excessive.

13 Q. Do you have any documentation showing that
14 Mr. Lombardo booked flights that were more expensive
15 than his --

16 A. Yes, I believe Sharon Simmons has the
17 documentation.

18 Q. Was that documentation turned over in
19 Discovery?

20 A. I don't believe you asked for it.

21 Q. When was the travel expenses change made to
22 the employee handbook?

23 A. I don't know off the top of my head.

24 Q. Do you know what the prior language was
25 before whatever change was made?

1 A. There might not have been any prior
2 language. It was, the account managers, the employees
3 would book their own flights, period.

4 Q. Did they use a company credit card to book
5 -- get the flights?

6 A. It depends on who they were. If they had a
7 company credit card, we asked them to use a company
8 card. And we have another interesting story around
9 company credit card. So at that IEDC, this -- I think
10 this is important because it gives you a sense of
11 Mr. Lombardo's behavior and why we got to not trusting
12 him.

13 At that IEDC meeting, the last one that he
14 was at, Eli went and took two or three account
15 managers, new ones, that he wanted to learn. They
16 stayed at, I believe it was, Embassy Suites. Eli was
17 supposed to use the company credit card.

18 And so it -- we come to find out that Rick
19 put everyone's rooms on his credit card. Eli said, you
20 can't do that, Rick. So Eli went to the front desk,
21 gave them the Chmura credit card, had it all
22 transferred to Chmura, and guess what? Mr. Lombardo
23 came behind him and had it all switched to his card, so
24 that, presumably, he could get some extra points on his
25 personal card, not Chmura's card. So this is the kind

1 of behavior that is typical of Mr. Lombardo.

2 Q. Regardless of whether he did that or not,
3 and I will ask if you have a factual basis for that in
4 a moment, what harm did that do to Chmura?

5 A. What harm did that do to Chmura? Well, we
6 certainly didn't get to collect our points. We have a
7 Costco card, and just last year we received \$6,000
8 because of rebates. So he stole our rebate.

9 Q. Was there a written policy that
10 Mr. Lombardo had to -- or, account managers had to use
11 the company card?

12 A. It might have been written, but they
13 certainly had been told that. They were told that time
14 and again. And just by virtue of the fact that Eli
15 told Rick you can't put this on your personal card, you
16 got to put it on the credit card of the company. Eli
17 changed it to the credit card of the company and Rick
18 came behind him and switched it back to his own
19 personal card. What does that --

20 Q. Were you present when that happened?

21 A. I was not. I was staying at a different
22 hotel.

23 Q. Were they staying at the conference hotel?

24 A. They signed up late, so it was an overflow
25 conference hotel. The conference center was in the

1 middle of two hotels.

2 Q. Were you at the main conference hotel then?

3 A. I believe I was.

4 Q. I want to turn your attention to Page 7 in
5 the Work Day section.

6 A. (Indicating).

7 Q. And just tell me when you are ready.

8 A. Okay.

9 Q. Does anything in this section prevent an
10 account manager or senior account manager from working
11 more than 40 hours per week?

12 A. This doesn't prevent anyone from working
13 more than 40 hours a week.

14 Q. Okay. Were the account managers or senior
15 account managers prevented from working more than 40
16 hours a week, including Mr. Lombardo?

17 A. No. No.

18 Q. I want to show you what's been marked
19 Defendant's Exhibit S, as in Sam.

20 - - - - -

21 (Thereupon, Deposition Exhibit S, Copy
22 of Standard Operating Procedures Dated
23 4/5/2019, was marked for purposes of
24 identification.)

25 - - - - -

1 A. (Reviewing.)

2 Q. I'll have you take a look at this.

3 A. (Reviewing.)

4 THE WITNESS: You can just keep on going.

5 I am not real familiar with this. Wherever she wants me
6 to go, we can just go there.

7 Q. I am just going to have you take a look at
8 this one, generally. There is another one that we'll
9 look at in more depth.

10 Do you recognize this document?

11 A. Yes, Standard Operating Procedures.

12 Q. And it is dated April 5, 2019, correct?

13 A. Yes.

14 Q. And does this standard operating
15 procedures, as of April 5, 2019, apply to account
16 managers and senior account managers?

17 A. This -- I'm not as close to the sales team
18 as Leslie Peterson, but I would expect it does.

19 Q. Were you involved in the preparation of the
20 standard operating procedure?

21 A. No. I might have been asked about some of
22 the items, but I was not involved in creating it.

23 Q. Do you know who created it?

24 A. Greg Chmura was the original.

25 Q. Do you know when the first standard

1 operating procedures was created?

2 A. I do not know.

3 Q. Would it have been before April 5, 2019?

4 A. Yes.

5 Q. Would it have been before Mr. Lombardo
6 started with the company?

7 A. No, we didn't have standard operating
8 procedures before then. For sales.

9 Q. Do you know approximately when the first
10 standard operating procedure would have been created?

11 A. I don't, but I would -- yeah, I don't.
12 Greg Chmura got a black belt and it was after that, I
13 believe.

14 Q. Is this a true and accurate copy, to the
15 best of your knowledge, of the April 5, 2019 standard
16 operating procedures?

17 A. Yes.

18 Q. Let me show you what's been marked as
19 Defendant's Exhibit T.

20 - - - - -

21 (Thereupon, Deposition Exhibit T, Copy
22 of Email with Standard Operating
23 Procedures Dated 7/10/2019 Attached,
24 was marked for purposes of
25 identification.)

1			-	-	-	-	-
---	--	--	---	---	---	---	---

2 Q. There is a cover email, and then a document
3 following. I will let you scroll down and take a look
4 at that.

5	A. (Reviewing.)
---	-----------------

6 Q. Do you recognize this document?

7 A. I'm not copied on this email, but I see
8 what -- I've read what you put in front of me.

9 Q. If you go to the second page of this, you
10 will see, Standard Operating Procedures dated
11 July 10, 2019, correct?

12	A. Okay.
----	----------

13 Q. Have you seen that standard operating
14 procedures book?

15 THE WITNESS: I'm sorry, could you scroll
16 over so I can see what this looks like?

17 MR. SATTERWHITE: Sure.

18 THE WITNESS: You can keep on going. I am
19 interested in the text.

20 MR. SATTERWHITE: (Indicating).

21 THE WITNESS: Okay.

22 A. So the reason why I am kind of scratching
23 my head here is, see, now this one I haven't read --
24 unfortunately, when Eli started with us, we had very
25 good standard operating procedures; like, Greg had put

1 together very easy to read and understandable. And Eli
2 was asked to bring them up to date and put in some new
3 things. Instead of taking Greg's format, which was
4 standard for standard operating procedures, he took the
5 whole thing and turned it into a verbal paragraph,
6 which was hard to follow.

7 We are now in the process of going back to
8 Greg's approach, which was clearer for the account
9 managers. So that's -- I have not read this one, and
10 it's -- go ahead.

11 Q. I was going to ask you, do you know if the
12 July 10, 2019 version that's in front of us now was
13 implemented?

14 A. I do not know.

15 Q. Would Mr. Auerbach know that?

16 A. He was the one who sent the letter, so I
17 would expect so. The email.

18 Q. Other than the employee handbook and
19 standard operating procedures, are there any other
20 policy and procedures documents that control -- or that
21 was provided to account managers or senior account
22 managers?

23 A. Not that I'm aware of.

24 Q. And does the implemented version of the
25 standard operating procedures apply to all account

1 managers and senior account managers?

2 A. I would expect they would.

3 Q. Going back to Exhibit A. You were
4 designated as the corporate representative regarding
5 Topic 19, "Training on employment policies and
6 procedures and/or the employee handbook between
7 February 1, 2015 and October 31, 2019, including any
8 training provided to Mr. Lombardo", correct?

9 A. Correct.

10 Q. What type of training did Chmura conduct
11 with respect to the standard operating procedures and
12 employee handbook?

13 A. Well, they were all asked to read it, to
14 sign it, sometimes to kind of remind what they had
15 signed and agreed to. Training would -- when I think
16 of training, I think of training on how to use JobsEQ
17 on the analytics behind it, how they were created.

18 Q. Why don't we talk about that more
19 generally. What type of training was provided to an
20 account manager?

21 A. So when they first started working with us,
22 especially in the beginning with Rick and Austen, Greg
23 -- well, really, myself, John and Greg gave all the
24 demos. So they would sit in on our demos and we would
25 give them PowerPoint presentations. For example,

1 Leslie gave them a PowerPoint presentation, how to do
2 sales, how to close sales.

3 They would listen in on a lot of demos
4 until we got to the point where we felt they could do
5 it on their own, then they would give us the demo as if
6 we were the customer. And once they were finally able
7 to answer all the questions we thought were necessary,
8 then they were let loose to do their own demos.

9 Q. What other training was provided to
10 Mr. Lombardo?

11 A. We had -- again, like, Leslie Peterson's
12 background is from, you know, Fortune 500, Eastman
13 Chemical with Kodak, sales training, international
14 sales, and so she would give them PowerPoint
15 presentations and coach them through how to do sales
16 and close them. And we've had Marvin in Cleveland, who
17 is a sales coach, give them some sessions.

18 Q. Did Leslie -- or Ms. Peterson rather, did
19 Ms. Peterson provide that training during a period of
20 time, or did she provide -- let me ask a much more
21 simple question.

22 Did Ms. Peterson provide training
23 throughout Mr. Lombardo's employment?

24 A. She did while she was the manager, but even
25 when she -- Kyle West took over doing sales, he

1 referred to her. And I recall an incident where --
2 again, this was a -- an issue where Rick did something
3 where they had to reprimand him something for it. So
4 she was always involved, but she was only providing
5 sales training during the first part. And when we get
6 new salespeople, for example, the newest people, she
7 provided some training to them as well. And I did,
8 too.

9 The verticals are areas that we've worked
10 in for 20 years. That's not a development work force.
11 So they had no clue, well, what do these people do, or
12 why they do they even need our product? So we did a
13 lot of coaching and teaching for them to understand who
14 the client is and why our tool is real helpful to the
15 client.

16 Q. Can you explain to me the vertical concept?

17 A. Well, I guess we try to group our customers
18 in -- into what we call verticals. So educators are a
19 vertical. Like, educators, higher education, CTE,
20 technical community colleges. So that's all --
21 education counts as one vertical. Another vertical
22 would be educators -- I'm sorry, economic developers.

23 So Greater Richmond Partnership. We may
24 have the chambers as another vertical, but it also
25 falls under economic development. And then there is

1 workforce development.

2 So there is something called, the Workforce
3 Investment Opportunity Act, which has been around in
4 different forms since the 1950's, where money comes
5 from the federal government and given to the state.
6 The state takes their 10% admin and then gives it to
7 different areas around the state for these workforce
8 groups to help displaced workers find new jobs.

9 The Trade Act, when we lost all these jobs
10 in Danville because of going overseas in textiles and
11 apparel, that's another vertical on the workforce side.
12 And then we have H.R., human resources, the
13 corporate -- corporate real estate, and then there is
14 probably all other work we have, you know -- we have
15 some consulting firms, large consulting firms that use
16 JobsEQ, and corporations.

17 Q. How did -- well, I will come back to that
18 in your individual deposition because I know I'll draw
19 an objection. I'm curious as to how JobsEQ works with
20 so much data as applied, but I will come back to that.

21 MR. SATTERWHITE: I'm sorry, Christine. We
22 are not hearing you very clearly.

23 MS. COOPER: Oh. I have my phone as close
24 to my face as I can without holding it up to it, so I
25 will do better to speak into it.

1 MR. SATTERWHITE: Sorry.

2 MS. COOPER: No, it's technology.

3 Q. Did -- and I think you testified to this
4 earlier. Did Chmura keep a personnel file on
5 Mr. Lombardo?

6 A. Yes.

7 Q. Do you know what is contained in his
8 personnel file?

9 MR. SATTERWHITE: Object to the scope.

10 A. I have not looked at that file recently.

11 Q. Did Chmura keep any -- let me take a step
12 back. I am going to turn your attention back to
13 Defendant's Exhibit A and Paragraph 24. If you will
14 take a look at that.

15 A. (Reviewing.)

16 Yes.

17 Q. You were designated as the corporate
18 representative to testify to this topic; is that
19 correct?

20 A. Correct.

21 Q. Did Chmura keep a record of the hours that
22 Mr. Lombardo worked each day?

23 A. We had records such as when he used the key
24 fob to get into the office, when he was working on his
25 computer, and that type of information that gave us a

1 sense of his weekly hours.

2 Q. Did Chmura use any type of time clock
3 software, like to punch in and punch out?

4 A. No.

5 Q. Was Mr. Lombardo required to log his time
6 in any form or fashion?

7 A. I'm sorry, can you say that again? Was
8 Mr. Lombardo --

9 Q. Required to log his time?

10 A. No.

11 Q. I am going to turn your attention to Topic
12 Number 27, "Complaints made by Mr. Lombardo regarding
13 overtime pay and unpaid commissions." You are
14 designated as the corporate representative to speak on
15 this topic, correct?

16 A. Correct.

17 Q. Are you aware of any complaints
18 Mr. Lombardo made regarding overtime pay to Chmura?

19 A. Unequivocally, unequivocally, never.

20 Q. What about with respect to unpaid
21 commissions?

22 A. Unpaid commissions? You know, Rick was a
23 complainer. You know, for someone who made over
24 \$150,000, it is amazing that he would complain over
25 \$100. So I am sure he had complained, and I am aware

1 of some of them. I believe Leslie Peterson is the one
2 who can explain to you why he did not get what he
3 thought he was due.

4 Q. Well, you were designated as the corporate
5 representative on this topic. Did you prepare for this
6 topic?

7 A. Well, let's see. What number are we at
8 again?

9 Q. 27, unpaid commissions.

10 A. Well, I talk to Leslie about what she was
11 finding and those where he felt he was not paid
12 commissions, were those where he should not have been
13 paid full commission. The guy who preceded him, Rob I
14 believe his name was, had some sales that were just
15 about done. I mean, all Rick had to do was get the
16 signature. That did not warrant 15%.

17 So in any case where he had -- he claims he
18 had unpaid commissions, it would be a situation like
19 that where he wasn't warranted the full amount.

20 Q. Can you explain again why he wasn't
21 warranted the full amount? Let's use the very same
22 example, you mentioned Rob. Using that example, can
23 you walk me through that a little slower?

24 A. Sure. Okay, so when -- you know, it takes
25 a lot of work. We appreciate our salespeople. It

1 takes a lot of work to get a sale. You have to call
2 someone on the phone.

3 You may have to call them 10 times, and
4 they hang up on you the first 9 times. They finally
5 get an answer and you say, Hey, can I give you a demo,
6 and they say, sure. They put up a time, and then guess
7 what, oh, I am not available now, let's make it next
8 week.

9 So you got all prepared. You have to go
10 another week, call them on the phone. You give them
11 the demo, they really like it, and then they say, we
12 really like this, but we're not the decision maker.

13 We need to give another demo to the
14 decision maker. So then they get in, they get it to
15 the decision maker, and they give another demo, and
16 they say, this is great, how much is it going to cost?
17 I'm really going to have push on the budget.

18 And then the salesperson continues to call
19 every couple of weeks to say, Hey, have you gotten this
20 through the budget? They finally get it through the
21 budget and then they say, now we need the contracts.
22 We send them the contracts, and often times they will
23 come back and they will make changes to it, or -- and
24 we have to -- you know, our good attorneys here have
25 taught us things we can accept and things we can't.

1 Sometimes we have to run it by the
2 attorney, and you know that cost a little bit of money.
3 So now at this point, we have an agreement that has
4 already been signed -- not already been signed -- that
5 the client is ready to sign, it gets handed to Rick and
6 Rick calls this guy on the phone -- calls him on the
7 phone, he picks up first time, and he says, I'm
8 emailing this to you. He emails it to him and it gets
9 signed.

10 Q. And so what commission -- that makes sense.
11 What commission would have been paid on instances like
12 that?

13 A. On that one, I think it might have been 5%
14 or 3%. I'm not sure off the top of my head.

15 Q. The scenario you just laid out, the calling
16 10 times, the doing the demos, or setting up a new time
17 for a demo, giving the demo, was that all -- is that
18 all work done in house while the account manager was in
19 their office?

20 MR. SATTERWHITE: I'm sorry. I didn't hear
21 the middle part of that question, Christine.

22 Q. Let me say it again. The scenario that you
23 just took us through, Dr. Chmura, that scenario, were
24 those calls made while -- would those calls be made
25 while in the Chmura office?

1 A. In that particular scenario, they were.
2 With Rob, we went up to the pentagon several times. He
3 was former military, so we were trying to make some
4 sales to the military. So, you know, it varies.

5 Q. Did -- were there ever instances in which a
6 similar scenario would play out, the account manager
7 would receive the full commission?

8 MR. SATTERWHITE: I'm going to object to
9 the scope to the extent this overlaps with the
10 calculations and commissions topic that we've
11 designated Ms. Peterson for. She can answer, but in
12 her individual capacity.

13 MS. COOPER: Okay.

14 A. Can you ask the question again?

15 Q. Yes, I can. The scenario that you just set
16 out for us, were there ever instances in which account
17 managers would have received the full commission as
18 opposed to reduced commission?

19 A. There shouldn't have been.

20 Q. To your knowledge, or do you know if there
21 ever were?

22 A. To my knowledge, yeah, based on my personal
23 experience, I don't know of any.

24 Q. Do you know how many complaints
25 Mr. Lombardo made regarding unpaid commission?

1 A. How many complaints? I do not know. I
2 didn't keep track of that.

3 Q. Do you know whether Chmura owes
4 Mr. Lombardo any unpaid commissions?

5 MR. SATTERWHITE: Object to the form.

6 A. I would -- I don't expect that we owe him
7 anything regarding unpaid commissions.

8 Q. Do you have any factual basis for that
9 belief or expectation?

10 A. We are very --

11 MR. SATTERWHITE: Object to the form.

12 A. We are very careful about what we do, and
13 once again, integrity is important to us. So even when
14 there is someone that we had to dismiss, we look
15 carefully to make sure that we are dealing honestly.

16 Q. I am going to turn your attention to Topic
17 Number 28, "Mr. Lombardo's termination, including the
18 decision to terminate, reason for termination, meetings
19 regarding termination, and notice to Mr. Lombardo of
20 his termination." You were designated the corporate
21 representative on that topic, correct?

22 A. Correct.

23 Q. When was the decision to terminate
24 Mr. Lombardo made?

25 A. Well, backing up. I was at the Governors

1 Advisory Board of Economists, which once a year I am
2 supposed to go to these meetings to help Virginia look
3 at its forecast. And around 10 o'clock, I got an email
4 from Leslie Peterson asking if I could step out to talk
5 to her.

6 And then it ended up, given what was going
7 on; that is, Rick running around telling people he was
8 going to sue the company, he was going to put us under,
9 he was going to sell our lists to the highest bidder,
10 he was saying all kinds of things about leadership that
11 was untrue about them personally, I had to dismiss
12 myself from that meeting.

13 As I was walking back to the office,
14 Leslie, Greg and Sharon already had Rod on the line to
15 discuss our next steps --

16 MR. SATTERWHITE: And I don't want --

17 MS. COOPER: I don't want to hear about
18 your --

19 MR. SATTERWHITE: -- any part of that
20 conversation.

21 THE WITNESS: Okay. Thanks for stopping
22 me.

23 MS. COOPER: I was going to say the same
24 thing, Rod.

25 BY MS. COOPER:

1 Q. When was that? You were at a meeting.

2 When was that meeting?

3 A. I should have written down that date. It
4 was in the middle of October.

5 Q. Did you actually hear Mr. Lombardo say any
6 of the statements that you just testified he stated?

7 A. No, I was in Richmond, Virginia and he was
8 in Cleveland, Ohio.

9 Q. What statements did Mr. Lombardo -- or do
10 you believe Mr. Lombardo made? Let me restate that.

11 Did Ms. Peterson tell you that Mr. Lombardo
12 was making untrue statements about leadership?

13 A. I think she did. I got this information as
14 well from Greg and Eli, I believe.

15 Q. And was it at the same time he was making
16 the other statements you mentioned?

17 A. Yes.

18 Q. What were those -- what were the statements
19 that were untrue?

20 THE WITNESS: Do I need to tell her?

21 MR. SATTERWHITE: Yes.

22 A. That Leslie hated men. That his wife --
23 her husband slept with the neighbor's wife; that both
24 Leslie and I hated men; that we didn't want to pay them
25 commissions.

1 Q. Okay. So what occurred after you talked to
2 -- after you had your conversation with counsel, what
3 occurred next?

4 A. I believe the letter went out to Rick
5 requesting that he send back the information. I
6 believe we offered him maybe 10,000 as a severance.

7 Q. At that point, was Mr. Lombardo on unpaid
8 leave?

9 A. He was not -- I don't remember if it was
10 unpaid or not, but he certainly wasn't working. But he
11 was still -- he had not been fired yet.

12 Q. Why did Chmura decide to terminate
13 Mr. Lombardo's employment?

14 A. Well, certainly, we saw from the pattern of
15 his work relationship with us, that, one, greater
16 distrust was occurring over time. But when you get to
17 the point that someone says, "I am going to take your
18 book of business and sell it to the competition, I am
19 going to put you out of business, I am going to screw
20 you," I think any reasonable minded person would fire
21 someone at that point.

22 Q. In the days leading up to those reported
23 statements, what had occurred?

24 A. Can you be more --

25 MR. SATTERWHITE: Object to the form.

1 A. Can you be more specific than that?

2 Q. Well, did Mr. Lombardo just wake up one
3 morning, talking to himself in his head, or did
4 something occur prior to --

5 MR. SATTERWHITE: Same objection.

6 A. I don't have a timeline of what set him
7 off.

8 Q. I believe in the Complaint that we have
9 gone through, it was stated that Mr. Lombardo was upset
10 that the commission structure was going to change; is
11 that correct?

12 MR. SATTERWHITE: Object to the form.

13 A. That's speculation. It could be that's why
14 he was upset. But then again what I said earlier was
15 that -- that change in commission structure had not
16 been put in place. It had not been approved by
17 leadership.

18 Q. When was it approved -- let me ask. Was it
19 approved by leadership?

20 A. It was not approved by leadership prior to
21 Rick's dismissal.

22 Q. Was it approved after Mr. Lombardo's
23 dismissal?

24 A. A change was made. Obviously, a change had
25 to be made, but I am not sure that it was -- in fact, I

1 am sure it wasn't exactly what was proposed by
2 Mr. Auerbach -- Mr. Auerbach, Eli.

3 Q. Did Chmura have any meetings regarding --
4 without counsel -- meetings regarding Mr. Lombardo's
5 termination?

6 A. I'm sure we did. I mean, it was a very
7 disruptive thing to happen to someone, to have one of
8 your employees come in and tell you, basically, that
9 they are going to destroy what you had created in the
10 prior 19 years; that they are going to destroy the 45
11 people that you are employing. Oh, yes, we had many
12 conversations, I am sure.

13 Q. But, again, you didn't personally hear him
14 make any statements, correct?

15 A. No, I did not.

16 Q. Do you know how much time passed between
17 when Mr. Lombardo was put on unpaid leave and when he
18 was terminated?

19 A. I guess in the letter, we gave him a little
20 time to decide if he was going to take the \$10,000 and
21 sign that document. So when he refused to sign it,
22 that probably was the point where we dismissed him.

23 Q. Why didn't Chmura just fire him that day
24 that he purportedly made those comments?

25 A. Well, we wanted to look -- we wanted to

1 make sure that we considered our options. We wanted to
2 give him the opportunity to say that he was going to
3 abide by the confidentiality agreement he had signed.
4 We needed that confidence first. We were giving him,
5 like we always are and have been, giving him the
6 opportunity to do the right thing.

7 Q. So his options -- were there additional
8 options other than signing the severance agreement that
9 you provided -- that Chmura provided or being
10 terminated?

11 A. Not after what he said. No, there were no
12 other options.

13 Q. Were you present when Mr. Lombardo was sent
14 home from the office in October?

15 A. No. As I previously stated, I was in
16 Richmond, Virginia and he was in Cleveland, Ohio.

17 Q. Did you have any communications with
18 Mr. Lombardo on that day?

19 A. I don't recall. I would say, no, I did
20 not.

21 Q. Did you have any communications with
22 Mr. Lombardo after that time?

23 A. No.

24 Q. Did Chmura inform -- let me restate that.
25 Did Mr. Auerbach know that Mr. Lombardo

1 would either be terminated or have to sign -- I'm sorry
2 let me restate that.

3 Did Mr. Auerbach know that Mr. Lombardo
4 would either be terminated or sign the agreement that
5 was handed to him that day or sent to him?

6 MR. SATTERWHITE: Object to the form.

7 A. Yes.

8 Q. At the time of Mr. Lombardo's termination,
9 he was one of the top producing account managers,
10 correct?

11 A. Correct.

12 Q. And at the time he was terminated, he had
13 been informed by Mr. Auerbach that the commission
14 structure at Chmura was going to change; is that
15 correct?

16 A. Apparently. I don't know that Auerbach
17 told him for sure it would be happen, but that it was
18 being presented to leadership. And it did make the
19 change. We have to be able to -- we have to be able to
20 service our client.

21 Q. Up to that point, up to this incident -- I
22 want to understand. The reason the changes were made
23 were to better provide for the client. How were the
24 clients not being provided for prior to making the
25 changes within the sales structure, the commission

1 structure?

2 A. To better provide for the clients and to
3 enable us to use the -- their account managers' skills.
4 Both Austen and Rick were very good at prospecting and
5 bringing in new clients. If you are spending all of
6 your time calling on the client that you already have,
7 then you are not out there prospecting. So the new
8 business brought in would be less.

9 In terms of the clients, if you have, you
10 know, 300 clients, it is pretty hard to call all of
11 them and get their input on whether JobsEQ is going
12 well for them, whether they need to see things added to
13 JobsEQ and that type of thing.

14 Q. With respect to that, was Mr. Lombardo
15 hitting the quotas at that time?

16 A. Yes, he was.

17 Q. And Mr. Lombardo was incentivized to obtain
18 the sales because the commission was 15%, correct?

19 A. Correct.

20 Q. And a renewal sales commission was 3%,
21 correct?

22 A. Correct.

23 Q. In going back to how the clients were
24 better served, how were the clients not being served
25 prior to the change in the commission structure?

1 A. That's a --

2 MR. SATTERWHITE: Object to the form.

3 A. -- particular question that I can't answer.

4 Q. Well, a decision was made by Chmura, and
5 you testified that the reason the decision was made to
6 change the structure was to better service the client.
7 What -- how were clients not being serviced better
8 before? What -- let me re-ask it.

9 What deficiencies were there on the service
10 of the client that was solved by making the change?

11 A. They weren't getting their touch points.
12 They weren't getting phone calls from the account
13 manager. They weren't having a half hour conversation
14 to find out, "Are you having any issues with JobsEQ?
15 Are there things we need to do for you?"

16 Q. Was Chmura getting complaints from the
17 clients about this?

18 A. I don't recall.

19 Q. All of this information is tracked within
20 Salesforce, correct? The touch points are tracked
21 within Salesforce, correct?

22 A. Correct.

23 Q. Did you review the Salesforce data to see
24 if the touch points had changed -- the number of touch
25 points had changed?

1 A. I don't even have a password to Salesforce.

2 Q. Did anyone at Chmura track Salesforce to
3 determine if the number of touch points per client has
4 changed?

5 A. Now, I see this line of discussion as being
6 kind of odd because we are talking about a company --
7 we are talking about a company that serves the client
8 because they have JobsEQ. We have a competitor. We
9 believe our data are better than the competitors.

10 If we are going to reach out and give
11 people this better data, we can't do it with two super
12 stars. We've got to have more than that. The company
13 is going to evolve over time. It is just -- it is how,
14 you know, companies grow.

15 So I -- you know, certainly, we are serving
16 the clients better when we have them distributed.
17 There are a lot of different models that can be used.
18 You've got the hunter, you've got the farmer, the --
19 you know, it is all business strategy. Nothing against
20 Rick, nothing against the clients -- you know, the
21 account managers that we had, it is just a matter of
22 business evolving.

23 Q. At the time that Mr. Lombardo was put on
24 unpaid leave, or immediately prior to that, did he have
25 the highest renewal rate?

1 A. From -- I believe he did, but not by much,
2 maybe 3 percentage points.

3 Q. Who would have been behind him?

4 A. Austen Steele.

5 Q. Was there anyone else as far, any other
6 account managers close?

7 A. I don't know Wilson's numbers.

8 Q. I want to go over another exhibit, but it
9 is marked highly confidential, so I need to excuse Rick
10 from the room before I bring that up.

11 - - - - -

12 (SHORT BREAK OFF THE RECORD.)

13 (MR. LOMBARDO LEFT THE ROOM).

14 - - - - -

15 BY MS. COOPER:

16 Q. Moving on to Topic Number 30, "The changes
17 to the operations of the the sales team in October
18 2019, including the reason for the changes."

19 Dr. Chmura, you were designated as the
20 corporate representative of this topic, correct?

21 A. Correct.

22 Q. I want to show you what's been marked
23 Defendant's Exhibit X.

24 - - - - -

25 (Thereupon, Deposition Exhibit X,

1 Highly Confidential Copy of Email Dated
2 10/2/2019 Bates CHMURA0201264-269, was
3 marked for purposes of identification.)

4 - - - - -

5 Q. You might have to manipulate this to --

6 A. Yes, I am familiar with this.

7 Q. What is it?

8 A. This is -- I believe this is that proposed
9 organization structure change that Eli was presenting
10 to us.

11 Q. And was any of this proposal adopted?

12 A. Not before Rick was dismissed, and some of
13 it was adopted afterwards.

14 Q. Would this have been a proposal that Eli
15 talked to Mr. Lombardo about?

16 MR. SATTERWHITE: Object to the form.

17 A. I have no clue.

18 Q. If you page down just a couple pages to one
19 which is Bates labeled Chmura 0201266, the chart with
20 Sales Manager at the top.

21 MR. SATTERWHITE: (Indicating).

22 Q. That page there.

23 MR. SATTERWHITE: Sorry. Very sensitive.

24 Okay (indicating), there.

25 Q. And this page shows a diagram of the

1 proposed structure for the sales team, correct?

2 A. Correct.

3 Q. Ignoring the commission and salaries on
4 there, the structure itself, this structure has
5 actually been on that list quite a while?

6 A. No.

7 Q. What is the current structure of the sales
8 team if you know?

9 MR. SATTERWHITE: I am going to object to
10 the scope, subject to the objection that we made in the
11 30(b)6 designation, but she can answer.

12 A. We certainly had a sales manager, and we
13 have account executives, or account managers. The
14 account managers and account executives all report to
15 the sales manager. There is no territory manager, so
16 it is very flat.

17 Q. What is an account executive?

18 A. Someone who has more experience and more
19 responsibilities than the account manager.

20 Q. Was it a renaming of the senior account
21 manager position?

22 A. It could be. I don't even know if we use
23 an account executive or if we just use senior account
24 manager, to be honest.

25 Q. If you flip to the next page here. I guess

1 I am going to ask you so scroll --

2 MR. SATTERWHITE: (Indicating).

3 Q. This shows, or purports to be the 2020
4 sales presentation plan under the existing structure.
5 Do you see that?

6 A. Yes.

7 Q. And in this existing structure -- is this
8 -- well let me ask you this, do you know who prepared
9 this?

10 A. I read the email documents. I am not sure,
11 actually, if Eli did or Greg, but I -- I think it
12 probably was Eli, but Greg reviewed it.

13 Q. But you did not create it, correct?

14 A. Oh, no.

15 Q. If you would turn to the next page of this
16 document -- wait, before you do, go to the last one.
17 I'm sorry. It has, a total compensation of \$215,000
18 for Mr. Lombardo on that first line. Do you see that?

19 A. Yes.

20 Q. What's your understanding of what the
21 number represents?

22 A. It would -- it would be an estimate for
23 2020, what Eli thought Rick would bring in.

24 Q. Okay. You can scroll to the next chart.

25 MR. SATTERWHITE: (Indicating).

1 Q. The top of it says, 2020 Sales Compensation
2 Plan - Proposed Structure, correct?

3 A. Correct.

4 Q. And on that same line with Mr. Lombardo's
5 name, Rick, on there, it has nothing in the base
6 salary, correct?

7 A. Correct.

8 Q. Nothing in New Business?

9 A. Correct.

10 Q. Nothing in Commission Rate?

11 A. Correct.

12 Q. Nothing in New Business Commission?

13 A. Correct.

14 Q. Or Renewal Business?

15 A. Correct.

16 Q. Or in Commission Rate?

17 A. Correct.

18 Q. Or in Renewal Commission?

19 A. Correct.

20 Q. But it has a total compensation of \$80,000,
21 correct?

22 A. Correct.

23 Q. Do you know what that \$80,000 represented?

24 A. My recollection is that Eli was trying to
25 come up with an alternative scenario if the plan -- if

1 the plan was rolled out, if the change in sales
2 structure was laid out as he proposed, he felt Rick
3 would be unhappy. And Eli was proposing -- Eli
4 believed that Rick would not leave without drama and
5 was proposing that we give him \$80,000 to leave without
6 drama.

7 Q. And what did leadership decide to do?

8 A. Well, we didn't roll out the plan, for one
9 thing. But we certainly were reticent to pay him
10 \$80,000 to do what we had already paid him to do, to --
11 we didn't want to pay someone -- we thought it was
12 unethical and not honest to pay someone to do what they
13 should have done under the confidentiality agreement
14 that they signed with us.

15 Q. So this email was dated -- well, let me --
16 this email was dated on -- the email attaching this
17 information behind it was dated October 2, 2019,
18 correct?

19 A. Correct.

20 Q. At that point, had it been decided that
21 Mr. Lombardo would be terminated from employment?

22 A. No. We did not decide to terminate him
23 until he started running around the office saying he
24 was going to sue us and put us under.

25 Q. Then why would Mr. Auerbach -- let me

1 strike that.

2 At this point on October 2, 2019, did
3 Chmura intend to keep Mr. Lombardo as an employee?

4 A. Yes.

5 Q. So why -- did Mr. Auerbach prepare this
6 proposed structure at someone's direction?

7 A. I don't believe so, no. I think he did
8 this on his own.

9 Q. If you would turn to -- page down and you
10 will see a sheet not too far down there that has a pie
11 chart and a graph on it.

12 MR. SATTERWHITE: Can you give me a Bates
13 number?

14 MS. COOPER: Oh, yes, I can. No, I can't
15 because it is a native document. It is the very next
16 one after the pay schedule. You will see it attached
17 to the right.

18 MR. SATTERWHITE: (Indicating).

19 MS. COOPER: There you go.

20 Q. And can you describe for me what this page
21 on Exhibit X is showing?

22 A. If I could see it. I am going to have to
23 walk up. You are --

24 MR. SATTERWHITE: Kelli, can you still hear
25 her?

1 COURT REPORTER: So far, yes.

2 A. It is showing sales by account manager over
3 time.

4 Q. From 2015 through 2019, correct?

5 A. Quarter Three, correct.

6 Q. And there is a pie chart there that shows
7 JobsEQ New Sales 2015 to 2019, Q3, correct?

8 A. Correct.

9 Q. Mr. Lombardo makes up 47% of those new
10 sales, correct?

11 A. That's what it is showing.

12 Q. Do you have any reason to believe that
13 number is not accurate?

14 A. Well, those are his current clients. That
15 probably -- that could have taken into account the
16 clients that were handed to him when he first came to
17 work with us. So there should be, instead of -- there
18 should be another category that are called, either,
19 book of business given from prior sales.

20 And that would be not just Chris and Leslie
21 sales, but whenever an account manager left, we would
22 divvy up their sales. So John Grebenc, for example,
23 when he left, we divvied up his sales to give them to
24 the other account managers. So that would reduce
25 everyone's piece of the pie a little bit.

1 Q. But that still doesn't add up to 100%,
2 right?

3 A. Oh, yes, but I'm just saying it is going to
4 reduce everyone's piece of the pie because you are
5 going to have a pie there from maybe 10% JobsEQ clients
6 won by different sales persons, but then handed off to
7 Rick or handed off to Austen.

8 Q. And then they would have to maintain that
9 relationship, correct?

10 A. Correct. Going forward, correct.

11 Q. What are -- what changes were made -- let
12 me -- so this proposal was not adopted in its entirety,
13 correct?

14 A. Correct.

15 Q. I am going to put this document away and go
16 get Mr. Lombardo and then continue, if that's all
17 right?

18 A. Okay.

19 MR. SATTERWHITE: Fine by me.

20 - - - - -

21 (Short pause off the record.)

22 (Mr. Lombardo rejoined the deposition.)

23 - - - - -

24 MS. COOPER: Back on.

25

1 BY MS. COOPER:

2 Q. Ultimately, what changes were adopted to
3 the structure of the sales team?

4 A. At what point in time?

5 Q. After --

6 MR. SATTERWHITE: Sorry, can I stop you?
7 If Mr. Lombardo's coming back in the room, can we get
8 rid of this document from the screen?

9 MS. COOPER: Oh, my goodness, yes. I am
10 sorry. Thank you. I put the hard copy away, but ...

11 BY MS. COOPER:

12 Q. After Mr. Lombardo's termination, what
13 changes were made to the structure of the sales team?

14 A. Well, we added a couple of people. We
15 changed the rates to increase their salary.

16 Q. How much did you increase -- what was the
17 prior base salary?

18 A. I believe it was 55, but I'm not the person
19 in charge of their salaries.

20 Q. Who is?

21 A. Leslie Peterson would have a better idea of
22 what it is.

23 Q. And after the change, what was the new base
24 salary?

25 A. I believe it was 60,000 but I'm not sure.

1 Q. Would the commission --

2 A. It would vary by -- I'm sorry.

3 It varied by person as well, account
4 manager or -- either account manager or account
5 executive, whatever the titles we are using.

6 Q. Was the senior account manager paid a
7 higher base salary than an account manager?

8 A. Yes.

9 Q. Do you know how much more that a senior
10 account manager --

11 A. I'm sorry, I don't. I'm sorry, I don't.

12 Q. Did the commission percentage change?

13 A. Yes, it went down -- again, I am not sure
14 how much. I believe the renewal went from 5 to 3. And
15 the new ones, I think, went from 15 to 13, but I'm not
16 sure.

17 Q. And would Ms. Peterson also know that?

18 A. Yes.

19 Q. Were there any other changes?

20 A. Not that I recall.

21 Q. Switching gears. I don't know if you would
22 like to take a break. I am about to move on to a
23 completely different topic, or if you just want to keep
24 charging ahead?

25 A. It's up to all of you. I'm fine.

1 MR. SATTERWHITE: We are good to go.

2 MS. COOPER: Okay. Good.

3 Q. If you would look at Exhibit A, Topic
4 Number 33. You were designated to testify about "The
5 confidential and trade secret information purportedly
6 retained by Mr. Lombardo, including a description and
7 itemization of each purported trade sheet, and all
8 purportedly confidential information," correct?

9 A. Correct.

10 Q. And I think we covered a lot of this, but I
11 believe earlier you testified that there were the notes
12 from the two conferences, correct?

13 A. Correct.

14 Q. And then, perhaps, an Excel spreadsheet
15 with client information on it, correct?

16 A. Correct.

17 Q. Is there anything else that you allege
18 Mr. Lombardo retained that was confidential or trade
19 secret information -- or contained confidential or
20 trade secret information?

21 MR. SATTERWHITE: I object to the form.

22 A. Certainly the pipeline of -- or the road
23 map of what's being added to JobsEQ is confidential.
24 Our licenses are confidential. The pricing sheet is
25 confidential. That's all that comes to mind off the

1 top of my head.

2 Q. Can you explain what the pipeline/road map
3 is?

4 A. Sure. So our clients ask us to add things
5 to JobsEQ. They say, Wouldn't it be nice if we could,
6 instead of being able to look at a footprint by the zip
7 code level, wouldn't it be nice if we could do it by
8 the block level, down to the city block level.

9 So that would be an example that's in our
10 road map. Or, Can you add a report related to Section
11 5, that they can automatically pull out. Can you add
12 more detail on growth development products. Can you
13 add housing permits?

14 So all of those items are things that are
15 on our pipeline road. We are trying to get ahead of
16 our competition. So if EMSI were to know -- so if EMSI
17 were to know what was on our pipeline, they could put
18 some of their workers -- I.T. workers on creating the
19 same thing, maybe even faster than we did.

20 Q. Where was that information stored?

21 A. That information is in an Excel file. It
22 is also in our -- when we give our monthly sales
23 meetings, we discuss what's coming up on the pipeline.

24 Q. Do you have any reason to believe that
25 Mr. Lombardo had access to that information after he

1 was put on unpaid leave?

2 A. Just as far as his behavior, we don't know
3 what he kept and what he hasn't disclosed; what he
4 still has in his computer and what he has in his house.
5 I have no idea of knowing.

6 Q. So you are speculating as to what may be
7 out there?

8 A. You can say it that way.

9 Q. Essentially, you are giving me a list of
10 the confidential information that Chmura has; is that
11 correct?

12 A. I am giving you a partial list, yes.

13 Q. But not necessarily a list of what you know
14 Mr. Lombardo retained?

15 A. That's correct. We don't know what he
16 retained.

17 Q. You have since received a computer back
18 that you allege Mr. Lombardo retained, correct?

19 A. That's correct.

20 Q. And you had a chance -- Chmura had an
21 opportunity to look at that computer, correct?

22 A. No, we have not. The attorneys have.

23 Q. Is the computer still in the possession of
24 the attorneys?

25 A. I believe it is.

1 Q. What process -- turning now to Topic Number
2 36. You were designated as the corporate
3 representative to testify regarding, "Chmura's process
4 and procedures for the protection of highly
5 confidential information and trade secrets, including
6 the confidential and trade secret information
7 purportedly retained by Mr. Lombardo," correct?

8 A. Correct.

9 Q. What processes did Chmura have in place to
10 protect it's confidential information?

11 A. Well, clearly, they sign a confidentiality
12 agreement. So that's one item. We have passwords so
13 that they can't get that information. So not
14 everything is accessible through the account managers.
15 But the --

16 Q. What gets a password?

17 A. Well, with Salesforce, there is a password.
18 There are some documents that John Chmura, for example,
19 gives us access to and then we have our own passwords
20 that we use to access it.

21 Q. I think what you are describing, and
22 correct me if I'm wrong, but there are -- Salesforce
23 has different -- or different people have different
24 access levels to the information that is in Salesforce;
25 is that correct?

1 A. Correct.

2 Q. Are you asserting that Mr. Lombardo
3 accessed information, but not -- he did not have
4 permission to access within Salesforce during his
5 employment?

6 MR. SATTERWHITE: Christine, you are
7 cutting out again. I lost --

8 MS. COOPER: Sorry.

9 Q. Are you asserting that Mr. Lombardo
10 accessed information that he did not have permission to
11 access within Salesforce during his employment?

12 A. No, the question is that he is using
13 them -- he is using them incorrectly by giving it to
14 other people.

15 Q. And when you say, "them", what are you
16 referring to? "Using them?"

17 A. He -- the confidential information, whether
18 it be the list of our customers, whether it be how much
19 money each of our sales managers make, how many sales
20 that they make, what our sales had been over time --

21 Q. But he did not -- let me restate that.

22 At the time he was employed, he had access
23 to that information, correct?

24 A. Correct.

25 Q. Does Chmura use a multi-factor

1 authentication within Salesforce?

2 A. I don't have access to Salesforce, so I am
3 not sure what -- we do use multi-factor in some cases.
4 That would be a John question.

5 Q. Okay. What other process does Chmura have
6 in place to protect it's highly confidential
7 information and trade secrets?

8 A. Well, if it's a paper copy, it is locked up
9 some place. If it's either information on how to
10 create our JobsEQ product, then access is limited to
11 only need-to-know basis.

12 Q. With respect to -- well, with respect to
13 Number 37, you were designated as the corporate
14 representative to testify, "A description of all
15 resources, including time and money, invested in the
16 development of the purport trade secrets retained by
17 Mr. Lombardo, as alleged in the Complaint," correct?

18 A. Correct.

19 Q. Can you tell me what time and money
20 resources were invested in generating the two -- the
21 notes from the two conferences that you testified about
22 earlier?

23 A. So you are limiting it to something very
24 discreet now.

25 Q. I am starting -- yes, we will go through

1 it.

2 A. Okay. All right. So that -- IEDC is a
3 very big event for us. We are a corporate sponsor at
4 \$25,000 per year. They have four meetings, and the
5 other three are very small, like 2 to 300 people, if
6 that. The one that -- the last one Rick attended had a
7 couple thousand people that attend.

8 We pay for the salespeople to go to that
9 meeting, so their travel costs, their hotel bills, the
10 food that they eat there. And we have a booth that we
11 have paid good money, and they cost maybe 5 - \$600 to
12 ship those things around. And then, certainly, my time
13 in preparing that Ed Talk should be thrown in there.
14 So I'm sitting -- I sit in the booth for three days.

15 Q. What about the other conference? So you
16 talked about the IEDC. The conference down in Texas.

17 A. The conference down in Texas, we sent only
18 Mr. Lombardo. I am not sure what the sponsorship fee,
19 if there was one for that. And, of course, the
20 opportunity cost that we are paying for Mr. Lombardo to
21 sit there and talk to our competitors, look for other
22 job opportunities on our time behind us.

23 Q. Did everyone that attended the IEDC
24 conference have the same access to the attendees?

25 A. Yes and no. Mr. Lombardo was supposed to

1 be, you know, the guy with all the experience, training
2 the other ones. So he pretty much snatched up all the
3 cards and took notes.

4 Q. What about the other attendees, and not
5 Chmura's attendees? The other attendees at the
6 conference?

7 A. I'm sorry, I don't understand the question.

8 Q. Was there -- was an attendee list provided
9 for this conference?

10 A. Yes, there was.

11 Q. And did anyone in attendance have access to
12 that attendee list?

13 A. No. Only those who were -- I believe only
14 those who were corporate sponsors or, you know, bigger
15 sponsors.

16 Q. And I apologize. I am going to repeat my
17 question only because I just want to make sure I am
18 clear on the answer.

19 Well, actually, I will go here. EMSI was
20 present at the IEDC conference, correct?

21 A. The IEDC conference, correct.

22 Q. Was it a sponsor as well?

23 A. It was. I believe -- I think they were a
24 corporate sponsor.

25 Q. So would they have had the same access to

1 the attendees that Chmura had?

2 A. If they were a corporate sponsor, then they
3 would have been given an attendee list.

4 Q. Was the attendee list made available once
5 you were at the conference? Did other attendees -- for
6 example, if I just showed up at that conference, would
7 I get an attendee list?

8 A. No.

9 MR. SATTERWHITE: Object to the form of the
10 question.

11 A. No, you would not get it.

12 Q. Was the attendee list emailed prior to the
13 conference?

14 A. Typically, yes.

15 Q. So the information contained on those
16 notes, were, one, customer names, correct? Potential
17 customer names, rather, correct?

18 A. Potential customer names? Yes.

19 Q. And those potential customer names could
20 have been known by other attendees at the time,
21 correct?

22 A. They could have, but they -- we only knew
23 of their interest because they stopped by our booth.

24 Q. And how many companies had booths at the
25 conference?

1 A. Oh, I don't know, 20/30, maybe a little
2 more.

3 Q. How many competitors of Chmura were
4 present? And you may have already answered this. But
5 how many competitors of Chmura were at the conference?

6 A. Oh, EMSI is the only closely related that
7 would have a full suite like we do.

8 Q. What was the economic value of those notes,
9 if different than, like, the damages calculation you
10 gave earlier?

11 A. I would say it was, at minimum, the damages
12 I gave you earlier.

13 Q. You said, "at minimum." What else would be
14 added to that, or could be added to that?

15 A. Well, as I said, we did the present value
16 for four years. We could have done the present value
17 for six years or seven years. More people who came by
18 the booth that did not request a demo might have agreed
19 to a demo after another phone call was provided.

20 Q. Who are the competitors of Chmura?

21 A. If we are just talking the JobsEQ, then the
22 main competitor is EMSI, Burning Glass to some degree.
23 At this point those are the main ones, maybe Headlight,
24 but, you know, not so much. Maybe StateBook would be
25 considered a competitor, but they are kind of

1 different.

2 Q. Chmura has a client list, correct?

3 A. Yes.

4 Q. Does it also have a prospective client
5 list?

6 A. Well, I guess you could call it prospective
7 client list. I mean, anyone who has been contacted
8 would be considered a prospective client.

9 Q. And is it your belief that MC, or EMSI does
10 not have the same client list that Chmura has?

11 A. I am sure they have a different client
12 list. I mean, they don't -- unless someone handed them
13 our client list. We probably go -- I'm sure we go
14 after some clients that they go after, but I would not
15 assume that they -- that we both have the same client
16 list, no.

17 Q. And what facts support that contention?

18 A. Well, when people come up to you at a booth
19 and they never knew that the data that we provide were
20 even available. There are a lot of people out there
21 that don't know what we can offer them. So if we are
22 finding new clients every week because they don't have
23 a tool similar to what we have, and that says to me
24 that they are not on EMSI's client list.

25 Q. Can you describe for me who Chmura targets

1 as a prospective client that EMSI does not target?

2 MR. SATTERWHITE: Object to the form.

3 A. It is kind of hard to say. I believe we
4 appear to be going after a lot more of the CTE,
5 continuing technical education, because we are picking
6 those up right and left. And it seems like EMSI just
7 doesn't know about the market, or they are not
8 interested in servicing that market.

9 Q. Going back to the competitor list, can you
10 describe for me how EMSI competes with Chmura?

11 A. Can you be more specific about that?

12 Q. Sure. Is it selling a similar product? Is
13 EMSI selling a similar product?

14 A. Right. So they -- I am having a hard time
15 trying to figure out how to answer that. They will
16 come show a demo. They will undercut our price
17 sometimes. They will emphasize, maybe, a feature that
18 they think they have better than ours.

19 They will identify, perhaps, some analytics
20 that we don't have. The same thing that we would do,
21 ideally, to them, or in competing with them.

22 Q. And what does -- I think you said it was
23 Burning Glass; is that correct?

24 A. Correct.

25 Q. What do they sell?

1 A. Well, they do a lot of things in the H.R.
2 area, but where they compete with us is job postings.
3 So they do duplicate. They crawl all these websites.
4 They do duplicate it, and then they provide it as a
5 tool. And we do the same, but we do a lot more than
6 that. So they just have one little piece where we
7 compete.

8 Q. And what about Headlight?

9 A. Headlight is a firm out of Texas that they
10 put something together similar to us. It is
11 occupational data, but it is not robust. It is not --
12 there are a lot of holes in it. We do a lot of work to
13 make sure that our data, whether -- information is not
14 disclosed that use other sources to create an estimate.

15 Q. And StateBook?

16 A. StateBook. Again, it seems like more of a
17 data dump from, you know, I want a bunch of different
18 demographics, or occupations at a high level from a
19 particular region.

20 Q. What measures have Chmura taken to ensure
21 that it's confidential information remains unknown to
22 EMSI, Burning Glass, Headlight and StateBook?

23 MR. SATTERWHITE: Object to the form.

24 A. We have our employees sign a
25 confidentiality agreement. We don't put it anywhere on

1 the internet. We protect stuff, confidential
2 information as a need-to-know basis. If we are letting
3 a large company, for example, a consulting firm, do a
4 demo trial of JobsEQ, we make them sign a non-compete,
5 or I think that's what you call it, NDA ahead of time.

6 Q. Did Chmura ever specifically request the
7 notes that he made from the IEDC conference and that
8 Texas conference?

9 A. Well, as a matter of course, typically, the
10 account managers will get it to us the next day or as
11 they were flying home. It was requested by Eli, and
12 then the attorneys requested it.

13 Q. When did Eli request it?

14 A. I don't know when the first time was. It
15 is in his affidavit, but he certainly requested it
16 after Rick was dismissed.

17 Q. IEDC conference, did Mr. Lombardo fly home
18 from that conference?

19 A. No, he drove. He drove.

20 Q. And do you know the date that -- do you
21 know the day that the conference ended, what date that
22 was?

23 A. I'm sorry. I don't have it off the top of
24 my head. It was in October. It was early October, I
25 believe.

1 MS. COOPER: If we take just a short break
2 so I can look over the topic and make sure I have
3 covered everything before we start the individual
4 deposition?

5 MR. SATTERWHITE: Christine, how long do
6 you think you are going to have on the individual
7 piece?

8 MS. COOPER: Not terribly long. I just
9 have a few questions.

10 MR. SATTERWHITE: Okay. Thank you.

11 MS. COOPER: Do you want a long break or --

12 MR. SATTERWHITE: Well, that's why I asked
13 the question. If you are going another hour, hour and
14 a half, I don't think we need one. If you are going to
15 go beyond that, we probably ought to talk about it.

16 MS. COOPER: We can go off the record.

17 - - - - -

18 (Discussion had off the record.)

19 - - - - -

20 MS. COOPER: Back on the record.

21 BY MS. COOPER:

22 Q. Dr. Chmura, I do not have any more
23 questions for you as it pertains to your designation as
24 a corporate representative. We are leaving the
25 corporate representative deposition open, but I've

1 asked all the questions that I need to ask of you for
2 that.

3 So moving to the individual deposition
4 portion. I want to get some clarification on some
5 things and just better understand a few topics.

6 Mr. Lombardo was hired as an inside sales
7 representative, correct?

8 A. An account manager.

9 Q. And was an account manager an inside sales
10 representative?

11 A. I am unfamiliar with the industry. I
12 couldn't tell you.

13 Q. Okay. Over his tenure at Chmura, how did
14 Mr. Lombardo's sales performance compare to the other
15 account managers?

16 A. He was the best performer. Austen Steele
17 was close behind him.

18 Q. And I believe you answered this already,
19 but what is the difference between an account manager
20 and a senior account manager?

21 MR. SATTERWHITE: Objection. Asked and
22 answered, but go ahead.

23 A. More experience, therefore, more
24 responsibility.

25 Q. Currently, since Mr. Lombardo has been

1 terminated, how are account managers classified?

2 A. Some of them are exempt. Some of them are
3 not exempt. Again, the title is -- I am not sure of
4 what their exact titles are, exempt versus non-exempt.

5 Q. Why did Chmura change from having all of
6 their sales -- well, all of the account managers be
7 exempt to some of them being non-exempt?

8 MR. SATTERWHITE: Objection to the extent
9 it calls for privileged information, but, otherwise,
10 you can answer.

11 A. Well, we were provided additional
12 information to make that assessment.

13 Q. How involved are you in the day-to-day
14 operations of the sales team?

15 A. Not all that involved. I mean, you know,
16 we'll -- I know when sales come in because I get copied
17 on a sale and I will congratulate them. But I try to
18 spend some time with them when we are up in Cleveland
19 or they are down in Richmond, but I'm not involved
20 unless there are issues or problems that someone brings
21 to my attention.

22 Q. How often would you communicate directly
23 with Mr. Lombardo?

24 A. Not very often. He might have a customer
25 that had a question or that we're doing some consulting

1 work, but, no, not at all very often.

2 Q. You provided testimony as a corporate
3 representative regarding IEDC conferences, correct?

4 A. Yes.

5 Q. Who attends that conference on behalf of
6 Chmura?

7 A. I was there, Rick -- Mr. Lombardo was
8 there. Eli Auerbach was there. Stephanie was there.
9 Logan -- Stephanie Wiley I believe it is. Logan, whose
10 last name is slipping me, and I believe Avery Simmons
11 was there for just one day because he had a side party
12 at the event place nearby, sports related.

13 Q. Of the individuals you just named, are any
14 of those, other than Mr. Lombardo, an account manager
15 or senior account manager?

16 MR. SATTERWHITE: Object to the form.

17 A. Stephanie and Logan.

18 Q. Did Stephanie take any notes at the
19 conference, to your knowledge?

20 A. Not to my knowledge.

21 Q. And what about Logan? Did he take any
22 notes that you know of?

23 A. Not to my knowledge, however, when the
24 attorneys provided us the documents from Rick's
25 computer, there was a very short document called,

1 Logan's Notes, I think something like that. So that
2 sort of implies he had a few notes.

3 Q. Do you know whether or not Logan followed
4 up with any of the -- well, let me ask a different way.
5 Did Logan's notes contain any potential
6 customers?

7 A. I didn't cross reference those to the list.
8 My suspicion is that Rick took Logan's notes and fused
9 them into his documents.

10 Q. Do you know whether Logan followed up with
11 any of the prospective clients from the conference?

12 A. I do not.

13 Q. Do you know whether Stephanie followed up
14 with any prospective clients from the conference?

15 A. I do not.

16 Q. Who is Avery Simmons?

17 A. Avery Simmons is our market -- I say
18 marketing associate. She is a new graduate, works
19 under Leslie Peterson.

20 Q. Would she have been expected to take notes
21 at the conference?

22 A. No, she would not have.

23 Q. What about Mr. Auerbach? Would he have
24 been expected to take notes from the conference?

25 A. No, he would not. And, in fact, now that

1 you are bringing this up, another expense that we had
2 at that conference that I had forgotten about is that
3 we, along with maybe four other firms, rented a -- it's
4 a space where you go to and they have all these awards
5 for different colleges for football, baseball,
6 whatever. And they have -- you can play basketball,
7 you can shoot hoops, you can, you know, jump, see how
8 high you can jump for a basket.

9 And so we spent money, a couple thousand --
10 I'm sure a couple thousand, several thousand dollars to
11 then invite maybe 20 of our customers. So each of us
12 invited -- that's another expense that we didn't recoup
13 anything from the notes that would have been with
14 Rick's documents.

15 Q. Was the full purpose of going to this
16 conference to obtain new clients?

17 A. That's how we survive. We go to 12 to 20
18 conferences and exhibits per year. That's where we get
19 our lists.

20 Q. Would it have -- is it -- let me ask it
21 this way: At the IEDC conference, were there existing
22 customers of Chmura in attendance?

23 A. Absolutely.

24 Q. Did Chmura, or any representative of
25 Chmura, meet with those clients while at that

1 conference?

2 A. Absolutely.

3 Q. So was another purpose of that conference
4 to have some face time with existing clients?

5 A. Yes, face time is important.

6 Q. And you testified in your -- as a corporate
7 representative, that one of the reasons to change the
8 commission structure and sales structure was to work on
9 -- to -- I don't want to put words in your mouth, so
10 let me strike that and just ask you.

11 In your individual deposition here, why did
12 Chmura choose to change the commissions and sales
13 payment structure?

14 A. Oh, we -- it was important to us to be able
15 to serve our clients, and it is important for us to
16 grow and serve more people. So -- you know, when we
17 first hired two salespeople, they told us, don't worry
18 about it, we will have the whole nation locked down in
19 two days. You know, Rick used to tell us, In one year
20 from now, there is not going to be another economic
21 developer out there who I haven't touched to buy our
22 software product.

23 So, you know, we are these numbers people.
24 So we go out and do our research and we find out there
25 is a market just for that kind of workforce, education,

1 that's about 60 million. If we stick with these two
2 salespeople, we are going to be just at the very bottom
3 of serving all those clients. So in order to serve the
4 number of clients that are out there, from a business
5 perspective, we have to increase our staff.

6 Q. Earlier you also testified that it was to
7 provide better service to your existing clients,
8 correct?

9 A. Correct. Yes, you can't possibly serve 500
10 people and follow-up with them and make sure that they
11 are getting the greatest value out of the product that
12 they can.

13 Q. So did Chmura receive any benefit by going
14 to the IEDC and interfacing with existing clients?

15 A. We certainly got some benefit there.
16 Whenever I stand up in front of 400 people and talk
17 about the economy, or about our software, that gives us
18 more -- more marketing opportunities. That gives us
19 more name recognition.

20 Q. And I believe your earlier testimony was
21 that Chmura wanted the sales team to put more emphasis
22 on its existing client base, correct?

23 MR. SATTERWHITE: Object to the form.

24 A. Yeah, but -- I don't know that I said we
25 wanted them to put more emphasis on the current client

1 base, but when they have such a large book of business,
2 they are not going out and looking for new clients
3 because they're having to spend more time with their
4 current clients.

5 Q. Well, I hear you saying two conflicting
6 things. One of those is this, that the reason for the
7 restructuring of the sales team was to provide better
8 service to existing clients -- strike that.

9 A. But --

10 Q. I don't have a pending question. Don't
11 give me an answer to something that's not out there.

12 How many conferences a year do you attend
13 personally?

14 A. Me personally? I have tried to cut back on
15 the number that I attend. I'd rather be at home than
16 flying around the country, unless, of course, it is a
17 nice place like Monterey or something like that. But,
18 unfortunately, I am getting requested to give speeches
19 more, so I'll end up maybe going to five or six or
20 seven and just give my speech and then hang out at the
21 booth a little while and leave.

22 Q. How many conferences does Chmura have a
23 booth at each year?

24 A. Again, it varies, but I'd say anywhere
25 between 12 and 20.

1 Q. Who attends those conferences -- let me
2 rephrase. That was very broad.

3 Who from Chmura attends those conferences?

4 A. It depends on the vertical. If it is
5 education, it would be Wilson. Currently, Bryan Shelly
6 do on the education side. It used to be that we had
7 salespeople for specific verticals, like economic
8 development and workforce, but now the salespeople are
9 going across all verticals. Going to all verticals.

10 Q. Sorry. How many conferences each year did
11 Mr. Lombardo attend?

12 MR. SATTERWHITE: Object to the form.

13 A. I would have to look at our -- I would have
14 to look at the past history of it, but we try to -- we
15 are talking about the salespeople opportunities to go
16 to conferences.

17 Q. That would be reflected in his calendar I
18 assume, correct?

19 A. Yes, yes.

20 Q. How frequently, do you know, did
21 Mr. Lombardo visit client sites?

22 A. Not very often.

23 Q. How about potential clients?

24 A. Not very often as well.

25 Q. Chmura is a Virginia company -- Virginia

1 limited liability company, correct?

2 A. Correct.

3 Q. I am going to show you an exhibit marked as
4 Exhibit C. If you could, take a look at it.

5 - - - - -

6 (Thereupon, Previously Marked
7 Deposition Exhibit C, Copy of Articles
8 of Organization for a Domestic Limited
9 Liability Company, Ohio, Dated
10 9/2/2011, was shown for purposes of
11 identification.)

12 - - - - -

13 A. (Reviewing.)

14 Okay.

15 Q. Do you recognize this document?

16 A. No, I don't recognize it.

17 Q. It purports to be an Articles of
18 Organization for Domestic Limited Liability Company
19 called, Chmura Economics & Analytics, LLC in Ohio. Are
20 you aware of whether Chmura Economics & Analytics, LLC
21 also has an Ohio limited liability company?

22 A. So I think we moved it up to Ohio for one
23 or two years and decided to bring it back here.

24 Q. Is the Ohio company still active?

25 A. No, it shouldn't be.

1 Q. Was Mr. Lombardo ever employed by the Ohio
2 company?

3 A. No, that's 2011. He came on 2016, correct?

4 Q. Were you involved with Mr. Lombardo's
5 annual review?

6 A. This year?

7 Q. Any year.

8 A. I believe I was this year because we went
9 up to Cleveland to talk to him about that falsified
10 letter. So I was in that annual review. In the past,
11 I don't believe I was.

12 Q. When was Mr. --

13 A. To the best of my recollection.

14 Q. And when were you -- when were you up to
15 see him, Mr. Lombardo, approximately?

16 A. February, March 2019.

17 Q. And would the annual reviews routinely be
18 conducted in March of that year -- of a year?

19 A. It would have been on his anniversary.
20 This was a special, peculiar one, though, because he
21 presented that offer letter to us that we had to do
22 some research on to make sure that we understood where
23 it came from. So it might have been late.

24 - - - - -

25 (Short recess taken).

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2 BY MS. COOPER:

3 Q. Dr. Chmura, how does Chmura document the --

4 | A. How does Chmura document?

5	Q. Annual reviews.
---	--------------------

6 A. We haven't had a very formal process in the
7 past, so it could be handwritten notes. It could be an
8 email. So, historically, it was just handwritten
9 notes.

10 Q. Would those be placed in the personnel file
11 of the employee?

12 A. It should be, yes.

13 Q. And if they weren't in the personnel file,
14 then there would have been no notes written up; is that
15 correct?

16 MR. SATTERWHITE: Object to the form.

17 A. I would suspect that there were -- well,
18 actually, someone might have kept it in their folder.
19 I can see Laura Leigh having done that, you know,
20 because she keeps a notebook and left notes in that
21 notebook.

22 Q. Do you believe any of Mr. Lombardo's annual
23 reviews are in that folder?

24 A. I don't know; however, I will tell you that
25 if it was Laura Leigh's, we had a flood at the office

1 and it was -- her desk area was kind of destroyed and
2 was thrown out.

3 Q. So there would be no way of knowing?

4 A. Correct.

5 Q. Were you involved with Mr. Auerbach's
6 termination?

7 A. Yes, I believe I was.

8 Q. What was your involvement?

9 A. Greg Chmura recommended that he be let go,
10 and so I was -- my involvement was in agreeing.

11 Q. What was the reason provided for that
12 recommendation?

13 A. Well, it was one of those situations
14 where -- here, Rick is an example. Where he was
15 providing information to salespeople before bringing it
16 to us, and then when we say no and he has to take it
17 back to the salespeople and say, Oh, I'm sorry they
18 didn't agree to it, he put us in an awkward position.

19 So he was creating a position where he was
20 pitting the salespeople against the leadership. And,
21 certainly, we are a team. We don't need that to
22 happen. He was also pitting salespeople against each
23 other.

24 So there were some salespeople he seemed to
25 show favor to, and others that he did not. He just was

1 not a good manager. So when we had changes in some
2 people getting higher salaries and others not, he sent
3 that information out in an email to the one person who
4 wasn't available to be at a meeting, and at the
5 meeting, he presented this information to various
6 people.

7 You just don't -- you don't have group
8 meetings for making decisions on who gets promoted and
9 who isn't.

10 Q. What meetings are you referring?

11 A. I am referring to the meeting where he told
12 the sales staff -- Rick was not there. This was after
13 Rick was gone. He told sales staff that two of them
14 were going to get, basically, promotions, the other two
15 were not, or two or three, or whatever.

16 So he just was not a good manager. He
17 wasn't good at communicating. He was causing more
18 destruction than good.

19 Q. That meeting you just referred to occurred
20 after Mr. Lombardo's termination?

21 A. Correct.

22 Q. Do you recall approximately the date
23 Mr. Auerbach was terminated?

24 A. No, I'm sorry, I don't.

25 Q. Were you present during his termination?

1 A. No, I was not. I was in Richmond. Greg
2 Chmura terminated him in Cleveland.

3 Q. The day he was terminated, did he send in
4 an affidavit signed by him to Chmura?

5 A. Yes, he did.

6 Q. And was he terminated -- is it your
7 understanding he was terminated at the same time or
8 concurrently with handing that affidavit in?

9 A. After turning it in.

10 Q. How long after?

11 A. I don't know. You would have to ask Greg
12 Chmura.

13 Q. Was it the same day?

14 A. I believe it was the same day.

15 MS. COOPER: Off the record for a moment.

16 - - - - -

17 (Discussion had off the record.)

18 - - - - -

19 MS. COOPER: Back on.

20 BY MS. COOPER:

21 Q. To your knowledge, was there a written job
22 description for account managers?

23 A. Not to my knowledge.

24 Q. Were there any job descriptions for any
25 positions, written, at Chmura?

1 A. At that time, probably not, maybe just
2 bullet points.

3 Q. Are there now job descriptions for
4 different positions?

5 A. We are moving along that way, yes.

6 Q. But not while Mr. Lombardo was employed,
7 correct?

8 A. That's correct.

9 MS. COOPER: If we can take a short break?
10 I think I am finished, but I want to just look over my
11 notes.

12 - - - - -
13 (Short recess taken).

14 - - - - -
15 MS. COOPER: I do have another question.

16 BY MS. COOPER:

17 Q. Very simply this, Chmura -- everyone I've
18 spoken to so far from Chmura, is using "the
19 leadership." Can you tell me who is, the leadership?

20 A. Yeah. You know, I think it was Eli that
21 started using that term, the leadership, but we have
22 something called SEA Group, Strategic Enterprise
23 alliance -- no, Strategic Enterprise Advisers that
24 would be made up of the CEO, myself; the CTO, John
25 Chmura; the President, Leslie Peterson; the Director of

1 Operations, Sharon Simmons; and Director of Research,
2 Xiaobing Shuai.

3 Q. Okay. Of those five people, is there a
4 primary decision maker in that group?

5 A. It depends on what the decision is to be
6 made.

7 Q. Can you tell me how decisions are made
8 within that group, who takes the lead on what
9 decisions?

10 A. Well, if it's I.T., that would be John
11 Chmura. If it was state and government, that would be
12 Greg Chmura. Sales is Leslie through Brian Shelly
13 right now. If it is operational related, finance or
14 H.R., that would come up through Sharon. But
15 oftentimes, it is Leslie or myself making the final
16 decision.

17 MS. COOPER: Okay. I don't have any other
18 questions at this point. I thank you very much for
19 your time, Dr. Chmura.

20 THE WITNESS: You're welcome. And you
21 resemble your brother, but you are the prettier one.

22 MS. COOPER: Thank you.

23 MR. SATTERWHITE: I have no questions, but
24 we will read and sign.

25 (Whereupon, deposition was concluded at 3:35 p.m.)

1 Whereupon, Counsel was requested to give instruction
2 regarding the witness's review of the transcript
3 pursuant to the Civil Rules.

4

5 SIGNATURE:

6

7 Transcript review was requested pursuant to the
8 applicable Rules of Civil Procedure.

9

10 TRANSCRIPT DELIVERY:

11 Counsel was requested to give instruction regarding
12 delivery date of transcript.

13 Ms. Cooper, Original transcript, yes.

14 Mr. Satterwhite, Certified transcript, and
15 rough transcript, yes.

16

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REPORTER'S CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, KELLIANN D. LINBERG, RPR, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, CHRISTINE CHMURA, PH.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

1 I do further certify that I am not a
2 relative, counsel or attorney for either party, or
3 otherwise interested in the event of this action.
4

5 IN WITNESS WHEREOF, I have hereunto set my
6 hand and affixed my seal of office at Cleveland, Ohio,
7 on this 12th day of May, 2020.
8
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10

11 
12

13 Kelliann D. Linberg, R.P.R.,
14 Notary Public within and for
15 the State of Ohio
16

17 My commission expires May 25, 2024.
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Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

May 12, 2020

To: Rodney A. Satterwhite, Esq.

Case Name: Chmura Economics & Analytics, LLC v. Lombardo, Richard

Veritext Reference Number: 4095526

Witness: Christine Chmura, Ph.D. Deposition Date: 5/1/2020

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4095526

CASE NAME: Chmura Economics & Analytics, LLC v. Lombardo,
Richard

DATE OF DEPOSITION: 5/1/2020

WITNESS' NAME: Christine Chmura, Ph.D.

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have made no changes to the testimony
as transcribed by the court reporter.

Date Christine Chmura, Ph.D.

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn
Statement; and

Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal

this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4095526

CASE NAME: Chmura Economics & Analytics, LLC v. Lombardo,
Richard

DATE OF DEPOSITION: 5/1/2020

WITNESS' NAME: Christine Chmura, Ph.D.

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
well as the reason(s) for the change(s).

I request that these changes be entered
as part of the record of my testimony.

I have executed the Errata Sheet, as well
as this Certificate, and request and authorize
that both be appended to the transcript of my
testimony and be incorporated therein.

Date

Christine Chmura, Ph.D.

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;
They have listed all of their corrections
in the appended Errata Sheet;
They signed the foregoing Sworn
Statement; and
Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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ERRATA SHEET
 VERITEXT LEGAL SOLUTIONS MIDWEST
 ASSIGNMENT NO: 4095526

PAGE/LINE(S) / CHANGE /REASON

 Date Christine Chmura, Ph.D.
 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
 DAY OF _____, 20____.

 Notary Public

 Commission Expiration Date

[& - 6]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

Deposition of Christine Chmura, Exhibit X

E-mail and Presentation

(Marked Highly Confidential – Attorneys Eyes Only and Filed Under Seal)